



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 6 मई, 2017 / 16 वैशाख, 1939

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

D/Shala, the 23rd March, 2017

No: Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

D/Shala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sr. No.	Ref. No.	Petitioner	Respondent	Date of Award/ Order
1.	803/16	Jhomfi Ram	E.E. HPPWD, Joginder Nagar	06-01-2017
2.	693/16	Raghubir Singh	M.D./ Employer Valence Healthcare	07-01-2017
3.	618/16	Rajesh Kumar	President/M.D. D.A.V. Committee	07-01-2017
4.	390/15	Rashpala	M/S Bector Food Specilities Ltd.	12-01-2017
5.	489/16	Avtar Singh	Employer, Deepak Fastner Ltd.	13-01-2017
6.	54/15	Jaipal	E.E.HPPWD, Dharampur	13-01-2017
7.	347/14	Ishwar Singh	E.E.HPPWD, Ghumarwin	13-01-2017
8.	59/13	Shyam Singh	G.M.Vamshi Hydro Energies Pvt.Ltd	20-01-2017
9.	73/13	Varun Kumar	- Do-	20-01-2017
10.	74/13	Desh Raj	- Do-	20-01-2017
11.	75/13	Rajesh Kumar	- Do-	20-01-2017
12.	76/13	Purshotam Chand	-Do-	20-01-2017
13.	77/13	Kuldeep Chand	-Do-	20-01-2017
14.	78/13	Bhupender Kumar	-Do-	20-01-2017
15.	80/13	Subhash Chand	-Do-	20-01-2017
16.	81/13	Dev Raj	- Do-	20-01-2017
17.	82/13	Surender Singh	-Do-	20-01-2017
18.	83/13	Onkar Chand	-Do-	20-01-2017
19.	84/13	Pyar Chand	-Do-	20-01-2017
20.	85/13	Dharam Chand	-Do-	20-01-2017
21.	115/13	Kamal Kapoor	-Do-	20-01-2017
22.	116/13	Vijay Kumar	-Do-	20-01-2017
23.	260/14	Darshan Lal	-Do-	20-01-2017
24.	424/15	Ramesh Kumar	E.E. HPPWD, Dharampur	20-01-2017
25.	265/14	Kishan Chand	D.F.O. Dalhousie	21-01-2017
26.	263/14	Karnail Singh	D.F.O. Dalhousie	21-01-2017
27.	264/14	Karam Chand	D.F.O. Dalhousie	21-01-2017
28.	50/08	Raj Kumar	G.M. ACC Barmana Barmana	21-01-2017
29.	105/02	Rajesh Chand	M/S Palampur Co.Op. Tea Factory	21-01-2017

By order,
R. D. DHIMAN, IAS
Pr. Secretary (Lab. & Emp.).

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 803/2016

Sh. Jhomfi Ram s/o Shri Munshi Ram, r/o V.P.O. Chalaharg, Tehsil Joginder Nagar, Distt. Mandi, H.P. ...Petitioner.

Versus

The Executive Engineer, B&R Division, HPPWD Joginder Nagar, District Mandi, H.P. ...Respondent.

06-01-2017 Present : Petitioner in person.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Heard. Petitioner has made a statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the petitioner as stated above, the reference No. 803/16 is hereby dismissed as withdrawn.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action at its end.
5. The file, after completion be consigned to the records.

Announced:
06-01.2017

(K. K. SHARMA),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 693/2016

Sh. Raghubir Singh s/o Shri Pritam Singh, r/o Village Bain Attarian, P.O. Kandrouri, Tehsil Indora, District Kangra, H.P. ...Petitioner.

Versus

The Managing Director/Employer, M/S Valence Healthcare, Plot No. 8 & 9, New Industrial Area, Village Bain Attarian, P.O. Kandroti (Near Pathankot), Tehsil Indora, District Kangra, H.P.

...Respondent.

07-01-2017 Present : None for the petitioner.

None for the respondent.

Labour Officer-cum-Conciliation Officer, Kangra at Dharamshala not present despite due service. Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.30 A.M. Be awaited and put up after lunch hours.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Kangra at Dharamshala, H.P.

07-01-2017 Present : None.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.45 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

07-01-2017

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 618/2016

Sh. Rajesh Kumar s/o Shri Jaishi Ram, through Shri N.L. Kaundal (A.R./Legal advisor)
BMS, H/Q Balakrupi, P.O. Jalpehar, Tehsil Joginder Nagar, District Mandi. ...Petitioner.

Versus

The President /Managing Director, D.A.V. College Management Committee, Chitra Gupta Road, New Delhi.

1. The Principal, D.A.V. Public School, Hamirpur, District Hamirpur, H.P.

....Respondents.

07-01-2017 Present : None for the petitioner.

Sh. Rahul Gupta, adv. csl. for the respondents.

Case called on several times but none has appeared on behalf of the petitioner despite due service. It is 11.25 A.M. Be awaited and put up after lunch hours.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Kangra at Dharamshala, H.P.

07-01-2017 Present : None for the petitioner.

Sh. Rahul Gupta, adv. csl. for the respondents.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:

07-01-2017

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial

Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 390/2015

Smt. Rashpala d/o Shri Jeet, r/o V.P.O. Jejo Duaba, Tehsil Garhshankar, District Hoshiarpur, Punjab

...Petitioner.

Versus

The Employer/Management, M/S Mrs. Bectors Food Specialities Limited, Plot No. 13, Industrial Area Tahliwal, Tehsil Haroli, Disdtrict Una, H.P. *...Respondent.*

12-01-2017 Present : Petitioner with Sh. R.K. Singh Parmar, A.R.

Sh. R.K. Nag, G.M. Admin. for the respondent company in person with Sh. Sanjeev Gupta, adv.

Case taken up for conciliation before this Court today, as result of which parties have amicably settled their dispute Sh. R.K. Nag, General Manager (Admin.) of respondent company vide separate statement on oath has stated that respondent has entered into compromise with the petitioner and has agreed to pay petitioner a lump-sum amount of Rs.50,000/- (Rs. Fifty Thousand only) with undertaking to engage petitioner afresh from 16-01-2017. It has also been stated by Sh. R.K. Nag that amount of Rs. 50,000/- shall be paid on 16-01-2017 besides the parties shall be bound by the compromise. Smt. Rashpala petitioner has admitted statement of Sh. N.K. Nag as correct who is also authorised by the respondent company. Statements recorded and placed on file. In view of the statements made by the parties, the reference is disposed off as compromised. Accordingly, respondent company M/S Mrs. Bectors Food Specialities Limited shall pay lump-sum of Rs. 50,000/- in lieu of all consequential benefits pertaining to reference no. 390/2015 to the petitioner and nothing shall remain to be paid to petitioner till the date of this award by respondent and that petitioner shall be appointed afresh on 16-01-2017 and shall also be paid lump-sum Rs. 50,000/- as stated above by the respondent.

Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
12-01-2017

(K. K. SHARMA)
*Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. : 489/2016

Sh. Avtar Singh, President, DFL Workers Union, Deepak Fastener Limited, Industrial Area, Tahliwal, District Una, H.P. *...Petitioner.*

Versus

Employer/Factory Manager, Deepak Fastener Limited, Industrial Area, Tahliwal, District Una, H.P. *...Respondent.*

13-01-2017 Present : Sh. S.K. Sharma, adv. csl. for the petitioner.

Sh. S. K. Nanda, adv. vice of Sh. Jitender Sharma, adv. csl. for the respondent.

Heard. Ld. csl. for the petitioner has made statement for withdrawal of reference pending before this Court. Statement recorded and placed on file. In view of the statement so made by the ld. csl. for the petitioner as stated above, the reference no. 489/16 is hereby dismissed as withdrawn with liberty to file afresh claim before the competent authority.

2. Ordered accordingly. The parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of the Order/Award be sent to the appropriate Government for information and further necessary action /publication at its end.
5. The file, after completion be consigned to the records.

Announced:
13-01.2017

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA, H.P.

Ref: No. 54/2015

Sh. Jai Pal s/o Shri Bakshi Ram, R/O Village Karyal, P.O. Sadhot, Tehsil Sarkaghat,
District Mandi, H.P. *...Petitioner.*

Versus

The Executive Engineer, HPPWD (B&R) Division, Dharampur, District Mandi, H.P.
...Respondents.

13-01-2017 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy.D.A. for the respondent.

Case called on several times but none has appeared on behalf of the petitioner despite due knowledge. It is 11.25 A.M. Be awaited and put up after lunch hours.

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

13-01-2017 Present : None for the petitioner.

Sh. Sanjeev Singh Rana, Dy. D.A. for the respondent.

Case has been called again several times but none has appeared on behalf of petitioner. It is 2.40 P.M. None appearance of petitioner or his counsel today is indicative of the fact that he is not interested to pursue present reference and accordingly reference is disposed of for non-prosecution. Reference is answered in the aforesaid terms. The parties to bear their own costs.

Let copy of the Order/Award be sent to the appropriate government for information and further necessary action / publication.

The file, after completion be consigned to the records.

Announced:
13-01-2017

(K. K. SHARMA)
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 347/2014

Date of Institution : 16.12.2014

Date of decision : 13.01.2017

Shri Ishwar Singh s/o Shri Kanshi Ram, r/o Village Dohru, P.O. Dhadol, Tehsil Ghumarwin, District Bilaspur, H.P. *...Petitioner.*

Versus

The Executive Engineer, Ghumarwin Division, H.P.P.W.D. Ghumarwin, District Bilaspur, H.P. *...Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Ishwar Singh S/O Shri Kanshi Ram, R/O Village Dohru, P.O. Dhadol, Tehsil Ghumarwin, District Bilaspur, H.P. during year 1998 by the Executive Engineer, Ghumarwin Division, H.P.P.W.D. Ghumarwin, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not what amount of back wages, seniority, past service benefits and from which date the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Briefly stated the facts as enumerated in the claim petition revealed that petitioner was engaged as beldar on 17.6.1997 who continued to work upto 31st July, 1998 and his services were terminated verbally whereupon petitioner moved to the Hon'ble Administrative Tribunal Shimla filing O.A. no. 3213/1999 and in pursuance to the order of Hon'ble Administrative Tribunal petitioner was ordered to be reengaged and after that petitioner continued to work upto 2001. The averments made in the claim petition revealed that Award dated 20.12.2008 of this Court challenged in the Hon'ble High Court of H.P. by filing CWP No.3944/2009 and petitioner had also filed CWP no.2516/2009 before the Hon'ble High Court seeking to declare his retrenchment from job illegal. According to petitioner he had worked for 158 days in the year 1997, 137 days in 1998, 47 days in 2000 and 284 in 2001 *i.e.* the year when his services had been terminated. The name of petitioner is stated to be existing at serial no.91 of the seniority list. The grievance of petitioner remains that out of 25 workers, 14 junior were engaged who continued in job. Thus by retaining persons who were junior to petitioner the principle of 'Last come First go' was flouted in flagrant violation of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) when the services of petitioner were terminated. Similarly, the petitioner claims to have completed 240 days and for said reason, respondent had also violated the provisions of Section 25-F of the Act as petitioner was never given compensation or wages in lieu thereof ever since his termination by the respondent however petitioner claims to have remained unemployed. Accordingly, prayed for reinstatement of the service of petitioner along-with consequential benefits, seniority and continuity in service.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits stated that petitioner was engaged as beldar (unskilled labourer) under the scheme of Employment Assurance Scheme only for 100 days. The salary of petitioner was being paid under the Employment Assurance Scheme (EAS) which was only for 100 days, so question of disengagement after 100 days did not violate legal right of the petitioner. Admitted that petitioner had worked 158 days in the year 1997 and 137 days during 1998 remaining mandays chart was shown in Annexure R-I. Averments in the reply further revealed that as per Government policy the EAS especially to down trodden persons the outline and objective of the scheme (EAS) annexed as Annexure R-II on record thereupon petitioner has filed O.A. no.3213/1999 before Hon'ble Administrative Tribunal and as per Hon'ble Administrative Tribunal, respondent was directed to provide service to petitioner but in themmeanwhile respondent had filed CWP no. 671/2001 before the Hon'ble High Court of H.P. who challenged the order dated 27.9.2000 passed by the Hon'ble Administrative Tribunal, H.P. It is alleged that CWP filed by respondent was accepted by the Hon'be High Court of H.P. and in pursuance to disengagement of the petitioner matter brought to this Tribunal while the same was dismissed on 17.1.2006. Claimant/petitioner has alleged to have filed another CWP no.1291/2006 before the Hon'ble High Court of H.P. and as per ratio of the Hon'ble High Court remanded the matter to this court for fresh decision in accordance with law. Again the matter came up for hearing before this Labour Court-cum-Industrial Tribunal and the same was allowed. The respondent had challenged the order dated 20.12.2008 before the Hon'ble High Court of H.P. and same was registered as CWP no.3944/2009 and same was allowed on 23.6.2010. On merits it is also contended that petitioner has been

retrenched as per Rules and not whimsically and his termination could not be stated to be illegal. The respondent also alleges that petitioner was gainfully employed as an agriculturist for his livelihood after retrenchment. It is also contended that since the petitioner was entitled for only 100 days scheme for work, he is not entitling for procedure under Section 25-F of the Industrial Disputes Act. It is stated that Special Leave Petition (Civil) no. (S) 1923-1926/2015 titled as State of H.P. & Anr. vs. Roshan Lal etc. vide which the Hon'ble Apex Court has stayed the operation as policy was merely 100 days under Employment Assurance Scheme beyond which petitioner could not be engaged. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, copy of workers who have engaged under EAS and reengaged as per order of Hon'ble Court Ex. PW1/B, copy of order dated 27.9.2000 passed by Hon'ble Administrative Tribunal in O.A. no.3213/99, copy of Award dated 20.12.2008 passed by this Tribunal in Reference no. 497/2004 Ex. PW1/D, copy of judgment dated 23.6.2010 passed in CWP nos. 2516 & 3944 of 2009 Ex. PW1/E, copy of seniority list of daily waged workers engaged under employment generation scheme Ex. PW1/F, copy of mandays chart of petitioner Ex. PW1/G and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Prakash Chand the then Executive Engineer, HPPWD Division Ghumarwin as RW1, tendered/proved his affidavit Ex. RW1/A, copy of outlines and objectives (chapter I to IV) Exts. RW1/B1 to B4, copy of O.A. no. 3213/1999 Ex. RW1/C, copy of order dated 20.8.2001 Ex. RW1/D, copy of Award dated 17.1.2006 Ex. RW1/E, copy of Award dated 20.12.2008 Ex. RW1/F, copy of order dated 23.6.2010 Ex. RW1/G, copy of seniority list Ex. RW1/H, copy of order dated 9.2.2015 Ex. RW1/I, copy of order dated 17.6.2014 Ex. RW1/J1 to Ex. RW1/J4 and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 04.07.2015 for determination:

1. Whether termination of the services of the petitioner by the respondent during year 1998 is/was improper and unjustified as alleged? ...*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
3. Whether the petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Relief : Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it would be apt to refer here that Hon'ble High Court of H.P. while disposing of CWP no.2516/2009 filed by present petitioner and CWP no.3944/2009 filed by State against the Award dated 20.12.2008 has allowed the appeal filed by state setting aside the impugned Award dated 20.12.2008 however CWP no.2516/2009 filed by workman was dismissed. It can be noticed from observations made in the operative portion of Ex. PW1/E of the Hon'ble High Court that order was passed by Hon'ble High Court dated 23.6.2010 shall not stand in the way of the workman, seeking fresh reference to the Labour Court about the legality of his alleged termination in the year 1998. At this stage, it would be apt to refer mandays chart Ex. PW1/G which shows that petitioner had worked for 158 days in the year 1997 and 137 days in 1998. However, in the year 2000 petitioner had worked for 47 days and in 2001 he had worked 284 days. Be it stated the reference relates to adjudication of controversy qua the years 1997 and 1998 and not in 2001. It is significant to mention here that in the years 1997 and 1998 petitioner had worked for more than 240 days as required for the applicability of provisions of Section 25-B of the Act. Evidently, there is no notice for termination of services of petitioner and at the same time no compensation has been paid by the respondent. It is equally important to mention here that observations of the Hon'ble High Court in its judgment dated 23.6.2010 pertains to controversy qua termination of the services of petitioner on 11.10.2001 without complying the provisions of the Industrial Disputes Act. The facts as stipulated in the order of Hon'ble High Court clearly show that the petitioner claimed to have worked till 2001 and therefore he had completed more than 240 days but it has to be noticed that petitioner was allowed to continue in job in pursuance to order of H.P. Administrative Tribunal as stated above which goes to show that petitioner under the colour of order of Hon'ble Administrative Tribunal continued to work till 2001. Since the respondent is stressing engagement of petitioner in specific scheme of 100 days as was also observed by my Id. predecessor-in-office while passing Award dated 20.12.2008 which was clearly observed in para no.8 of the Award Ex. PW1/D that had the respondent claimed of having engaged the petitioner only for 100 days under the aforesaid scheme being the petitioner would not have allowed to work beyond 100 days from the date of his employment i.e.17.6.1997. It necessarily follows that initially petitioner was engaged who continued to work till 1998 as stated above and thereafter his services were terminated under the garb having been employed of special Employment Assurance Scheme of government but factually this was not the correct position as the petitioner was engaged and disengaged and thereafter reengaged without clarification as to what scheme he has been appointed for. Thus, controversy which revolves for adjudication before this Tribunal as termination of petitioner in the year 1997 and 1998 only.

12. Stepping into witness box as PW1 has maintained as alleged in claim petition. In his cross-examination, he has denied that he had been employed under special Employment Assurance Scheme and he had shown his ignorance qua material facts which goes to show that while giving him employment he had not signed any paper and given any appointment letter. Thus, petitioner was not knowing as to how and/or in what manner he has been appointed. The petitioner has admitted that litigation between the parties' upto Hon'ble High Court and Hon'ble Administrative Tribunal. He has also admitted that matters filed before each either before Hon'ble High Court and his appeal was dismissed where as the appeal of department was allowed. This admission further leads to inference that Hon'ble High Court while allowing the appeal had held that petitioner had no right for engagement so required to be disengaged qua his termination in the year 2001 and not in 1998 for which matter is before this Court. RW1 Shri Prakash Chand, Executive Engineer,

HPPWD Division Ghumarwin while filing affidavit Ex. RW1/A has stated that petitioner was purely engaged on temporary basis under the Employment Assurance Scheme (EAS) w.e.f. 17.6.1997 who worked for 158 days in the year 1997 and 137 days in 1998 as coupled with statement as well as mandays chart, it can be safely inferred that petitioner had worked for more than 240 days immediately preceding 12 calendar months from the date of his termination.

13. The case of respondent, on the other hand, remains that due to non-availability of work and lack of funds, the petitioner was disengaged and OA no.3213/1999 filed before the Hon'ble Administrative Tribunal and vide order dated 27.09.2000, Hon'ble Administrative Tribunal had directed the respondent to provide service to petitioner but in the meantime respondent had filed CWP no.3944/2009 before the Hon'ble High Court vide which respondent i.e. department had challenged the order dated 27.9.2000 passed by Hon'ble Administrative Tribunal, Shimla and CWP filed by the respondent was allowed in pursuance to which the present petitioner had been disengaged who had then filed reference before the Presiding Judge, Labour Court which too was dismissed on 17.1.2006. RW1 has further stated that petitioner had again filed CWP no.2516/2009 before the Hon'ble High Court seeking direction to remand the matter for fresh decision in accordance with law and vide Award dated 20.12.2008 claim petition was partly allowed against which CWP no.3944/1999 was filed by the respondent which was allowed in favour of respondent and against the petitioner. RW1 also maintained that no provisions of Industrial Disputes Act had been violated since the petitioner was engaged only for 100 days. Be it noticed that the mandays chart Ex. PW1/G is demonstrative of petitioner having worked for more than 240 days during the period of 12 calendar months before the retrenchment in 1998. Section 25-F of the Industrial Disputes Act, 1947 is reproduced below for reference which reads as under:

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. Admittedly in the cross-examination of RW1 stated that no notice was given to the petitioner and was not paid any compensation as well. Thus, respondent in dispensing with the services of petitioner had violated the abovementioned provisions of Section 25-F of the Act.

15. Ld. Authorized Representative for present petitioner has referred to para no.6 of the affidavit which shows that 25 persons who were junior to the petitioner out of 14 have been retained in service. Close scrutiny of seniority list of daily waged workers Ex. PW1/F coupled with list of workers who have been engaged under the Employment Assurance Scheme (EAS) reengaged as per Hon'ble High Court order of Hon'ble Administrative Tribunal on record shows that all these 25 persons namely Dev Raj and others who figured at serial no.1 to till serial no.25 Lachaman Ram were all engaged in 1997. It is evident from list of 25 persons on record to above that persons figuring at serial no.12 namely Amar Singh in seniority list submitted in the Hon'ble

High Court from serial no.1 to 572 and thereafter next 13 persons named Baldev, Aklesh Kumar, Vishava Dev, Basu Dev, Raj Kumar, Piare Lal, Nikka Ram, Chaman Lal, Anil Kumar, Jagar Nath, Ram Pal, Ishwar Dass and Lachman Ram were regularized in service. Although, the seniority list relates to Employment Generation Scheme and Employment Assurance Scheme as stated above, the petitioner is figuring at serial no.91. Thus, the persons who had joined in the months of June, July, August, October, November and December, 1997 as per the list of Employment Assurance Scheme have been regularized in service and petitioner's services were terminated. Certainly, the petitioner was discriminated on the principle of 'Last come First go' envisaged under Section 25-G of the Act. Section 25-G reproduced as under:

“25-G. Procedure for retrenchment.—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. Since petitioner has claimed that all the persons qua junior to him were retained in service by the respondent and this deposition has not been challenged during the cross-examination by the respondent same deserves acceptance. Significantly, RW1 in cross-examination has admitted that according to seniority list petitioner's name figured at serial no.91 and 14 workers were junior to petitioner have been engaged. This fact again been accepted by RW1 in cross-examination which goes to show that respondent had violated the provisions of Section 25-G of the Act in retaining junior and retrenching senior in service i.e. principle of 'Last come First go' was not followed. Accordingly, respondent is held to have violated the provisions of Section 25-G of the Act.

17. Lastly, Authorized Representative for petitioner has argued vehemently that ever since his termination petitioner has remained unemployed and was entitled for back wages. In cross-examination, petitioner has admitted that he has cultivable land and was earning his livelihood by earning in his own land as well as earning through labour. Thus, it cannot be stated that petitioner was not earning anything during he was out of job. Otherwise also this plea cannot be accepted as per evidence on record petitioner has remained on roll till 11.10.2001 with the respondent and thus there could not be stated to have he was remained unemployed ever since 1998. As such, reliance has been placed on the judgment of Hon'ble Apex Court **North East Karnataka Road Transport Corporation vs. M. Nagangouda (2007) 10 SCC 765** in which Division Bench comprising of Justice A.R. Lakshmanan and Justice Altamas Kabir had held that **'term gainfully employment would also include self employment wherefrom income is generated. It was income either from employment in an establishment or from self employment merely differentiates the sources from which income is generated, the end use being the same'**. Applying the ratio of judgment of 2007 (supra) to this case since the petitioner was earning from his agricultural and manual pursuits, the same were sufficient to maintain him and his family. It is thus held that petitioner was gainfully employed. Thus, applying the ratio of judgment of Hon'ble Apex Court (2007 supra), it may not be erroneous to hold that petitioner was gainfully employed and thus would be not entitled for back wages for the period he was out of job on being terminated by the respondent. Issue no.1 is thus answered holding that retrenchment of services of petitioner by respondent during year 1998 was improper and unjustified and the petitioner is entitled to be reengaged along-with seniority, past service benefits except back wages. Issues no. 1 and 2 are answered accordingly.

ISSUE NO. 3

18. Since service of petitioner had been illegally terminated by the respondent as well as violated the provisions of Sections 25-F and 25-G of the Act, claim petition cannot be stated to be not maintainable. Hence, this issue is decided in favour of petitioner and against respondent.

RELIEF

19. As sequel to my findings on foregoing issues, the reference/claim petition is allowed partly. The respondent is hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination **except back wages**. The parties, however, shall bear their own costs.

20. The reference is answered in the aforesaid terms.

21. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

22. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 13th day of January, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 59/2013

Date of Institution : 17.07.2013

Date of decision : 20.1.2017

Shri Shyam Singh s/o Shri Bahadur Singh, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Shyam Singh S/O Shri Bahadur Singh, R/O Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f. 1-5-2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not then whether the workman is entitled to re-engagement with the above mentioned employer along with back wages and consequential benefits?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 01-07-2013 in respect of industrial dispute of Shri Shyam Singh, S/O Shri Bahadur Singh, R/O Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, "The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandra Bad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no. 2 being Sun Security Services had engaged the petitioner on 16.5.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no. 2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.3.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On

21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 7.8.2006 petitioner had been appointed as security guard by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 28.2.2010. The grievances of the petitioner also remains that on 1.3.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 14.12.2008 whereas the petitioner was working with the respondent no.3 since 7.8.2006 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 16.5.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 16.5.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work at

the site. It is also the case of respondent no.2 that he had asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA24 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, copy of receipt of full and final settlement Ex. RW1/B, copy of attendance register Ex. RW1/C, copy of pay roll register Ex. RW1/D, copy of attendance register Ex. RW1/E, copy of retrenchment notice Ex. RW1/F, copy of notice Ex. RW1/G, Ex. RA copy of PF number of workers dated 25th April, 2012, copy of Employees PF Scheme, 1952 Ex. RA1, copy of letter dated 25.4.2010 Ex. RA2, copy of letter Ex. RA3 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP*.
2. Whether the claim petition is not maintainable in the present form? ...*OPR*.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... *OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ... *OPR*.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:—

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/G notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RW1/F is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A, in cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2 and respondent no.1 as he was engaged by respondent no. 3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters whereupon agitated over, the management interpolated a labour contractor of respondent no.2 (Captain Ramesh Chand) where after on 1.3.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 16.5.2007 he was appointed as security guard by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no. 3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered

into contract with respondent no.2 showing as their employee from 14.12.2008 whereas petitioner was working with the respondent no.3 since 7.8.2006 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no. 2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 22 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is the application for recruitment of Shyam Singh with Sun Security Services. Similarly Ex. RW1/B is the receipt of full and final settlement of petitioner, this receipt signed by mother of petitioner shows that Shyam Singh was not paid above amounts so received by her mother. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/G is notice issued by Sun Security Services to the all concerned workers and security persons. As such from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner.

14. Ld. counsel for petitioner has taken through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect

name of establishment i.e. of respondent no.1. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.25. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showing Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.13 i.e. Ex. PA 3. Above stated, documents prepared by respondent no.1 also establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact has not been disputed by respondents in their reply, but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K. S. Jawatkar & Ors.**, it was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in AIR 1970 823 titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no. 3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind the principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no. 2 had made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore, even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991)** reported in **AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sectionis 7 and 12...."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Id. counsel for respondents have relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners were appointed as security guard and FCI had engaged them through agency of contractors. They were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other coworkers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no. 2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/G stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no. 2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no. 2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 21 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claimed from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. RW1/B which is undated and appears to be having thumb mark of mother of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.19635/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 7.8.2006 and he was appointed by respondent no.2 and his attendance of daily attendance register

was marked till 28.2.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no. 1 clearly shows that respondent no. 2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no. 3 who had been engaged by respondent no.1. As such, retrenchment was made by respondent no. 2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/G does not stipulate in specific date when this amount was disbursed to petitioner through his mother but either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no. 2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking reengagement job his claim of reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no. 3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it has to be specifically pleaded as to who were the necessary parties and in the

absence of same, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 73/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Varun Kumar s/o Shri Amar Chand r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).

2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).

3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor).
...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K. K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Varun Kumar s/o Shri Amar Chand r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No. 229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No. 5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Varun Kumar s/o Shri Amar Chand r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H. P. vs. (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No. 5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, (3) The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no. 3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no. 2 and after opening the contract,

respondent no.2 Sun Security Services had engaged the petitioner on 28.6.2006 as survey assistant on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 28.6.2006 petitioner had been appointed as survey assistant by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no. 3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 21.3.2007 whereas the petitioner was working with the respondent no.3 since 28.6.2006 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no. 2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 16.5.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that

petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 18.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA24 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of form, Ex. RW1/C copy of attendance register, Ex. RW1/D copy of bill, Ex. RW1/E copy of retrenchment order, Ex. RW1/F copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA6 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...OPP.
2. Whether the claim petition is not maintainable in the present form? ...OPR.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... OPR.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...OPR.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...OPR.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA4 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no. 3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour

Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 28.6.2006 he was appointed as survey assistant by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 21.3.2007 whereas petitioner was working with the respondent no.3 since 28.6.2006 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no. 2 and 3 were contractors. Ex. PA 21 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 22 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Varun Kumar, Sun Security Services. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.18,503/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/F which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent

no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/F is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.12. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.12 i.e. Ex. PA 5. Above stated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as

such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no. 3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No. 2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/H stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer

shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 21 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.18,503/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 28.6.2006 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO. 2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by Id. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/F does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K. K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 74/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Desh Raj s/o Shri Jagdish Chand, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. ...Petitioner

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).

2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).

3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Desh Raj s/o Shri Jagdish Chand, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihhar, Gurgaon, Haryana, C/O B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No. 5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Desh Raj s/o Shri Jagdish Chand, r/o Village Diyala, P.O. Jia,

Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 01.12.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 1.12.2007 petitioner had been appointed as ropeway operator by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 27.12.2007 whereas the petitioner was working with the respondent no.3 since 1.12.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other

workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 1.12.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no. 2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.12.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, copy of demand notice dated 23.12.2009 Mark-E, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA24 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of pay roll, Ex. RW1/C copy of retrenchment notice, Ex. RW1/D copy of Attendance register, copy of notice Ex. RW1/E, copies of various documents Exts. RA and Ex. RA1 to RA6 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP*.
2. Whether the claim petition is not maintainable in the present form? ... *OPR*.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR*.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR*.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no. 2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no. 1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no. 2 that he was engaged by respondent no.1 a principal employer and respondents no. 2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA4 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of

respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no. 2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no. 2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no .2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no. 2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 1.12.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no. 3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no. 2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no. 2 showing as their employee from 1.12.2007 whereas petitioner was working with the respondent no.3 since 1.12.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no. 2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no. 2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another

projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no. 2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no. 3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no. 2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 22 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application of Desh Raj, Sun Security Services. Similarly Ex. R-3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.16,653/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no. 3 and consequently respondent no. 2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.35. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.35 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no. 3 to respondent no. 2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as

has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no. 3. Another aspect of the matter which has been highlighted in the case is that respondent no. 3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the

projects awarded to respondent no.1 through respondent no. 2 called for retrenchment and appointment and consequently the Sun Security Services respondent no. 2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no. 3 did not figure in the retrenchment process but respondent no. 2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no. 2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no. 2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 21 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.16,653/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no. 2 was acting on behalf of respondent no.1 irrespective of fact that respondent no. 2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 1.12.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be

accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO. 2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no. 2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal

termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 75/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Rajesh Kumar s/o Shri Dass Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Rajesh Kumar s/o Shri Dass Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P w.e.f.1.5.2010 by (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Varun Kumar s/o Shri Rajesh Kumar s/o Shri Dass Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P vs. (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —(3) The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 18.6.2007 as civil foreman on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On

21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 18.6.2007 petitioner had been appointed as civil foreman by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 30.7.2008 whereas the petitioner was working with the respondent no.3 since 18.6.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no. 2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as civil foreman on 18.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no. 2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no. 2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 18.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no. 1 was completed, respondent no. 2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It

is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, copy of application dated 1.7.2008 Mark-G, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA31 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B & Ex. RW1/C copy of attendance register, Ex. RW1/D copy of retrenchment order, Ex. RW1/E copy of pay bill, Ex. RW1/F copy of posting letter, Ex. RW1/G copy of final bill, Ex. RW1/H copy of retrenchment notice, copies of various documents Exts. RA and Ex. RA1 to RA3 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ...*OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... *OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA3 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no. 2, respondent no.1 had engaged respondent no. 3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no. 2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no. 2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 18.6.2007 he was appointed as civil foreman by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no. 3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered

into contract with respondent no.2 showing as their employee from 30.7.2008 whereas petitioner was working with the respondent no.3 since 18.6.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no. 2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no. 1 was principal employer and respondents no. 2 and 3 were contractors. Ex. PA 21 is application of registration of establishments employing contract labour which shows that respondent no. 3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no. 2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 26 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Rajesh Kumar, Sun Security Services. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.36,161/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/H which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no. 2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any

case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/H is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.22. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.22 i.e. Ex. PA 5. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court "the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour

(Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no. 2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/H stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex.

PA 23 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.36,161/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 18.6.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/H does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which

manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which he has suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 76/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Purshotam Chand s/o Shri Demo Ram, r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Purshotam Chand s/o Shri Demo Ram, r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energie Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B. D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Purshotam Chand s/o Shri Demo Ram, r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad,

Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 28.5.2006 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 15.5.2007 petitioner had been appointed as labour by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 25.3.2008 whereas the petitioner was working with the respondent no.3 since 28.5.2006 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly,

petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 1.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of application form, Ex. R4 copy of muster roll register, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA27 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of attendance register, Ex. RW1/C copy of retrenchment notice, Ex. RW1/D copy of pay roll register, Ex. RW1/E copy of regarding retrenchment notice, copies of various documents Exts. RA and Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ... *OPR.*

3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ... *OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... *OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA5 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of

the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 28.5.2006 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 25.3.2008 whereas petitioner was working with the respondent no.3 since 28.5.2006 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 27 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Subhash Chand, Sun Security Services. Similarly, Ex.R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.18,503/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.9. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.19 i.e. Ex. PA 4. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur

University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no. 3 did not figure in the retrenchment process but respondent no.2 was following

all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs. Rs.18,503/-. what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 28.5.2006 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained

permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO. 2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner

within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 77/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Kuldeep Chand s/o Shri Madho Ram, r/o Village Dehal, P.O. Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Kuldeep Chand s/o Shri Madho Ram, r/o Village Dehal, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Kuldeep Chand s/o Shri Madho Ram, r/o Village Dehal, P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 28.5.2006 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on

28.5.2006 petitioner had been appointed as labour by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 15.8.2007 whereas the petitioner was working with the respondent no.3 since 28.5.2006 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 1.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of application form, Ex. R4 copy of muster roll register, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of full and final receipt, retrenchment notice Ex. RW1/C, copy of payment Bill Ex. RW1/D, copies of various documents Exts. RA and Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ... *OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... *OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUE NO. 1**

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner- III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA6 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 28.5.2006 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 15.8.2007 whereas petitioner was working with the respondent no.3 since 28.5.2006 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that

compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 26 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Kuldeep Chand, Sun Security Services. Similarly Ex. RW1/B is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.20,050/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.11. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.11 i.e. Ex. PA 2. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellants university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991)** reported in **AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. RW1/D which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.17640/- what was amount

as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 28.5.2006 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/D does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by Id. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K. K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 78/2013

Date of Institution : 01.08.2013

Date of decision : 20.1.2017

Shri Bhupender Kumar s/o Shri Chhanga Ram, r/o Village and P.O. Jia, Tehsil Palampur,
District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).

2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Bhupender Kumar s/o Shri Chhanga Ram, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, an addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Bhupender Kumar s/o Shri Chhanga Ram, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying

construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 01.9.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 15.10.2007 petitioner had been appointed as security guard by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no. 2 in which petitioner was shown as employee from 4.6.2008 whereas the petitioner was working with the respondent no.3 since 15.10.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no. 2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged

respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 1.9.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.9.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA24 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, copy of retrenchment notice Ex. RW1/B, Ex. RW1/C copy of demand notice, Ex. RW1/D copy of notice, Ex. RA copy of letter dated 25.4.2012, copies of various documents Exts. RA1 to RA4 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP*.
2. Whether the claim petition is not maintainable in the present form? ...*OPR*.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ... *OPR*.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR*.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/G notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA4 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour

Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 01.09.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no. 2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 4.6.2008 whereas petitioner was working with the respondent no.3 since 15.10.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no. 3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no. 2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no. 3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no. 2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is the application for recruitment of Bhupinder Kumar, Sun Security Services. Similarly Ex. R-3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.17,887/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/D which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services,

respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/D is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.25. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.32 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no. 2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no. 3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as

such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no. 3. Another aspect of the matter which has been highlighted in the case is that respondent no .3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695** , the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sectionis 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/G stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer

shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no. 2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.17,887/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 15.10.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by Id. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 80/2013

Date of Institution : 05.08.2013

Date of decision : 20.1.2017

Shri Subhash Chand s/o Shri Karam Chand, r/o Village Dehal, P.O. Jia, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Subhash Chand s/o Shri Karam Chand, r/o Village Dehal, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Subhash Chand s/o Shri Karam Chand, r/o Village Dehal, P.O. Jia,

Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhyogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no. 2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 16.5.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 15.5.2007 petitioner had been appointed as labour by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 27.9.2007 whereas the petitioner was working with the respondent no.3 since 16.5.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within

the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no. 2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 1.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no. 2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no. 2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, copy of conciliation Mark-E, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of application form, Ex. R4 copy of muster roll register, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of attendance register, Ex. RW1/C copy of retrenchment notice, Ex. RW1/D copy of pay roll register, Ex. RW1/E copy of attendance register, copies of various documents Exts. RA and Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ... *OPP*.
2. Whether the claim petition is not maintainable in the present form? ...*OPR*.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR*.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR*.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA3 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of

respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no. 2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no. 2, respondent no.1 had engaged respondent no. 3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 16.5.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 27.9.2007 whereas petitioner was working with the respondent no.3 since 16.5.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another

projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 26 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Subhash Chand, Sun Security Services. Similarly, Ex.R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.18,873/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/F which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.19. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.19 i.e. Ex. PA 5. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as

has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the

projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.18,873/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 16.5.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be

accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO. 2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and

severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 81/2013

Date of Institution : 05.08.2013

Date of decision : 20.1.2017

Shri Dev Raj s/o Shri Raj Mal, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra,
H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Dev Raj s/o Shri Raj Mal, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Shri Dev Raj s/o Shri Raj Mal, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 3.12.2007 as cook-helper on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on

3.12.2007 petitioner had been appointed as survey assistant by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 4.3.2008 whereas the petitioner was working with the respondent no.3 since 3.12.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contract, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no. 2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 01.4.2008 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.4.2008 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, Mark-E copy of demand notice dated 23.12.2009, Ex. R1 copy of register of workmen, Ex. R2 copy of recruitment application, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA25 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of form, copy of attendance register Ex. RW1/C, Ex. RW1/D copy of retrenchment order, Ex. RW1/E copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA6 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 1-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ... *OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ... *OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ... *OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ... *OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUE NO. 1**

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA-6 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 3.12.2007 he was appointed as survey assistant by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 4.3.2008 whereas petitioner was working with the respondent no.3 since 3.12.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further

alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Dev Raj. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.18,133/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.37. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.37 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellants university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/E stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.18,133/- what was amount as

retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 3.12.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/E does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by Id. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 82/2013

Date of Institution : 08.08.2013

Date of decision : 20.1.2017

Shri Surender Singh s/o Shri Partap Chand, r/o Village Andrar, P.O. Tang, Tehsil Dharamshala, District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).

2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Surender Singh s/o Shri Partap Chand, r/o Village Andrar, P.O. Tang, Tehsil Dharamshala, District Kangra, H.P. w.e.f.16.5.2010 by (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Surender Singh s/o Shri Partap Chand, r/o Village Andrar, P.O. Tang, Tehsil Dharamshala, District Kangra, H.P. vs. (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —(3) The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on

contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 29.7.2007 as survey assistant on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 29.7.2007 petitioner had been appointed as survey assistant by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 15.5.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 1.2.2010 whereas the petitioner was working with the respondent no.3 since 29.7.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and

jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 23.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 23.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, Mark-E copy of demand notice dated 23.12.2009, copy of experience certificate Ex. PW1/B, Ex. R1 copy of register of workmen, Ex. R2 copy of register of payment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B & Ex. RW1/C copy of pay roll, copy of attendance register Ex. RW1/D, Ex. RW1/E copy of retrenchment order, Ex. RW1/F copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 16-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ... *OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. The mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no. 2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no. 2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour

Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 29.7.2007 he was appointed as driver by respondent no.3 and his attendance was marked in respondent no. 3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 1.2.2010 whereas petitioner was working with the respondent no.3 since 29.7.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is payment register. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.25,658/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/F which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no. 2 all aspects concerning retrenchment compensation had

been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.28. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.28 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as

such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12...."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/H stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing

indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs. 25,658/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 29.7.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 15.5.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 16.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/F does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which he has suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K. K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 83/2013

Date of Institution : 05.08.2013

Date of decision : 20.1.2017

Shri Onkar Chand s/o Shri Jagdish Chand, r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Onkar Chand s/o Shri Jagdish Chand, r/o Village Kudan, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013in respect of industrial dispute of Shri Onkar Chand s/o Shri Jagdish Chand, r/o Village Kudan, P.O. Jia,

Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 28.5.2006 as survey assistant on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 28.5.2006 petitioner had been appointed as survey assistant by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 20.4.2008 whereas the petitioner was working with the respondent no.3 since 28.5.2006 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no. 2. It is alleged that date of appointment of petitioner and other

workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 01.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of attendance register Mark-D, Mark-E copy of conciliation, copy of demand notice dated 23.12.2009 Mark-F, Ex. R1 copy of register of workmen, Ex. R2 copy of recruitment application, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA27 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of form, copy of attendance register Ex. RW1/C, Ex. RW1/D copy of retrenchment order, Ex. RW1/E copy of employment register, Ex. RW1/F copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 1-05-2010 is/was illegal and unjustified as alleged? ...*OPP*.
2. Whether the claim petition is not maintainable in the present form? ...*OPR*.
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR*.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR*.
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR*.
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR*.

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/F notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA-5 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of

respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 28.5.2006 he was appointed as survey assistant by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 20.4.2008 whereas petitioner was working with the respondent no.3 since 28.5.2006 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its

another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 27 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. RW1/E is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Onkar Chand. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.19,367/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/F which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/F is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.8. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.8 i.e. Ex. PA 2. Above stated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as

has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the

projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/F stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.19,367/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 28.5.2006 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be

accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO. 2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO. 3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/F does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO. 5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner

forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 84/2013

Date of Institution : 05.08.2013

Date of decision : 20.1.2017

Shri Pyar Chand s/o Shri Dumnu Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Pyar Chand s/o Shri Dumnu Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Pyar Chand s/o Shri Dumnu Ram, r/o Village Diyala, P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No. 4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 01.12.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2

who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 1.12.2007 petitioner had been appointed as ropeway operator by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 13.9.2008 whereas the petitioner was working with the respondent no.3 since 1.12.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 26.4.2008 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 *i.e.* Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the

petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 26.4.2008 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, copy of demand notice dated 23.12.2009 Mark-E, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of retrenchment order, Ex. RW1/C copy of notice various documents Exts. RA and Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ... *OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ... *OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No. 2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner- III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA3 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 1.12.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner

was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 13.9.2008 whereas petitioner was working with the respondent no.3 since 1.12.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 22 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Desh Raj, Sun Security Services. Similarly Ex. R-3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.20,050/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much

was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/C is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.34. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.35 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract – Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship

subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all

several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.20,050/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 1.12.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex.

R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO. 4 & 6

22. These issues were not pressed by the Id. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by Id. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which he has suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 85/2013

Date of Institution : 05.08.2013

Date of decision : 20.1.2017

Shri Dharam Chand s/o Shri Hakam Chand, r/o Village and P.O. Jia, Tehsil Palampur,
District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Dharam Chand s/o Shri Hakam Chand, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.1.3.2010 by (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 25-07-2013 in respect of industrial dispute of Shri Varun Kumar s/o Shri Dharam Chand s/o Shri Hakam Chand, r/o

Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —(3) The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 6.7.2007 as security guard on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.3.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 6.7.2007 petitioner had been appointed as security guard by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 28.2.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 6.7.2010 whereas the petitioner was working with the respondent no.3 since 6.7.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within

the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as watchman on 01.9.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.9.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, Mark-E copy of demand notice dated 23.12.2009, Ex. R1 copy of register of workmen, Ex. R2 copy of recruitment application, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA25 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of pay roll, copy of attendance register Ex. RW1/C, Ex. RW1/D copy of posting letter, Ex. RW1/E copy of retrenchment order, Ex. RW1/F copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA6 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 1-03-2010 is/was illegal and unjustified as alleged? *OPP.*
2. Whether the claim petition is not maintainable in the present form? *...OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? *...OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? *... OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? *...OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? *...OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in crossexamination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/F notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were

advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. The mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.3.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 6.7.2007 he was appointed as security guard by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 6.10.2007 whereas petitioner was working with the respondent no.3 since 6.7.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the

petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-24 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Dharam Chand. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.18,750/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/F which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.25. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.25 i.e. Ex. PA 6. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was

necessary that relationship of master and servant must exist directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/F stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.18,750/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 6.7.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was

marked till 28.2.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.3.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/F does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner

forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref No. : 115/2013

Date of Institution : 08.08.2013

Date of decision : 20.1.2017

Shri Kamal Kapoor s/o Shri Sarwan Kapoor, r/o Village and P.O. Gopalpur, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Kamal Kapoor s/o Shri Sarwan Kapoor, r/o Village and P.O. Gopalpur, Tehsil Palampur, District Kangra, H.P. w.e.f.1.5.2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 30-07-2013 in respect of industrial dispute of Shri Kamal Kapoor s/o Shri Sarwan Kapoor, r/o Village and P.O. Gopalpur, Tehsil Palampur, District Kangra, H.P. vs. (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 24.6.2007 as unskilled labourer on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2

who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 24.6.2007 petitioner had been appointed as ropeway operator by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 4.6.2008 whereas the petitioner was working with the respondent no.3 since 24.06.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractorship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 24.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no. 2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no. 2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the

petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 24.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, copy of demand notice dated 23.12.2009 Mark-E, Ex. R1 copy of register of workmen, Ex. R2 copy of application for recruitment, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of pay roll, Ex. RW1/C copy of retrenchment order, copy of notice Ex. RW1/D, copies of various documents Exts. RA and Ex. RA1 to RA6 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 01-05-2010 is/was illegal and unjustified as alleged? ... *OPP.*
2. Whether the claim petition is not maintainable in the present form? ...*OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ... *OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no. 2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no. 2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/D notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. Ex. RA3 is the mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 24.6.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no. 3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner

was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no.3 entered into contract with respondent no.2 showing as their employee from 24.6.2007 whereas petitioner was working with the respondent no.3 since 24.6.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that labour work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 19 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is the attendance register of Kamal Kapoor, Sun Security Services. Similarly Ex. R-3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.20,354/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/C which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much

was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/D is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinctly connect name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.25. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.23 i.e. Ex. PA 5. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no. 2 made admission on oath the aspect qua relationship

subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner

and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.20,354/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 24.06.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex.

R3 does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs. 30,000/- jointly and severally to the petitioner for the mental harassment which he has suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 116/2013

Date of Institution : 08.08.2013

Date of decision : 20.1.2017

Shri Vijay Kumar s/o Shri Roshan Lal, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. ...Petitioner.

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). ...Respondents.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Vijay Kumar s/o Shri Roshan Lal, r/o Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f. 16.5.2010 by (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. After the receipt of the abovestated reference, a addendum dated 18th December, 2013 was received from the appropriate government which reads as under:

"With reference to this office notification of even number dated 30-07-2013 in respect of industrial dispute of Shri Varun Kumar s/o Shri Vijay Kumar s/o Shri Roshan Lal, r/o

Village and P.O. Jia, Tehsil Palampur, District Kangra, H.P. vs. (1) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B D Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (2) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (contractor) The following party is added as 3rd employer in the ibid reference, —(3) The General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITECH, City Madhapur, Hyderabad, Andhra Pradesh, C/O Shri B D Sharma Niwas, Shyamnagar, Dharamshala, District Kangra, H.P. (Contractor)"

3. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 6.12.2005 as driver on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 29.7.2007 petitioner had been appointed as survey assistant by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 15.5.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 1.2.2010 whereas the petitioner was working with the respondent no.3 since 6.12.2005 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid contractor-ship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other

workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 01.6.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.6.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, Mark-E copy of demand notice dated 23.12.2009, copy of letter dated 7.6.2010 Ex. PW1/B, Ex. PW1/C copy of detail of over time, Ex. PW1/D copy of log book, Ex. R1 copy of register of workmen, Ex. R2 copy of attendance register, Ex. R3 copy of full and final settlement, Exts. PA1 to Ex. PA10 copies of statutory rates of contribution, Ex. PA11 to Ex. PA26 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of pay roll, copy of attendance register Ex. RW1/C, Ex. RW1/D copy of retrenchment order, Ex. RW1/E copy of notice, copies of various documents Exts. RA & Ex. RA1 to RA5 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 01.05.2014 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 16-05-2010 is/was illegal and unjustified as alleged? ...*OPP.*
2. Whether the claim petition is not maintainable in the present form? ...*OPR.*
3. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged. If so, its effect? ...*OPR.*
4. Whether the petitioner has not come to the Court with clean hands as alleged? ...*OPR.*
5. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ...*OPR.*
6. Whether this Court has no jurisdiction to hear and decide the matter as alleged. If so, its effect? ...*OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : No

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO. 1

11. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/E notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were

advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. The mail dated 14th May, 2010 for disengagement of security personnel by Sun Security Manpower. In this letter instructions were passed by the management of respondent no.1 to disengage petitioner by 17.5.2010. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 15.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

12. PW1 petitioner has deposed on oath that on 6.12.2005 he was appointed as driver by respondent no.3 and his attendance was marked in respondent no. 3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no. 3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no. 3 entered into contract with respondent no.2 showing as their employee from 1.2.2010 whereas petitioner was working with the respondent no.3 since 6.12.2005 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no. 3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Baner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no. 2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the

project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

13. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 25 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is attendance register. Similarly Ex. R3 is the receipt of full and final settlement of petitioner and vide this receipt petitioner has acknowledged to have received a sum of Rs.30,938/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/E which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no. 2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

14. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA1 to Ex. PA10 which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RA shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.6. Ex. PA 1 to Ex. PA 10 shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.6 i.e. Ex. PA 2. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

15. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellant university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

16. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991) reported in AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

17. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was

necessary that relationship of master and servant must exist directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no. 2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/E stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner-III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

18. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

19. Enough has been emphasized by Id. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.30,938/- what was amount as retrenchment compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 6.12.2005 and he was appointed by respondent no.2 and his attendance of daily attendance register was

marked till 15.5.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no. 3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 16.5.2010. Accordingly, issue no.1 is decided in favour of petitioner and against the respondents.

ISSUE NO.2

20. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.3

21. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/E does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.4 & 6

22. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.5

23. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

24. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith.

The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

25. The reference is answered in the aforesaid terms.

26. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

27. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

Presiding Judge,

*Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 260/2014

Date of Institution : 14.08.2014

Date of decision : 20.1.2017

Shri Darshan Lal s/o Shri Jai Karan, r/o Village and Post Office Jia, Tehsil Palampur, District Kangra, H.P. *...Petitioner.*

Versus

1. The General Manager, Vamshi Hydro Energies Private Limited, Plot No.229, Phase-I, Udyognagar, Gurgaon, Haryana c/o BD Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer).
2. Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderabad, Andhra Pradesh c/o Ward No.5, Vinaygali, Village and P.O. & Tehsil Nurpur, District Kangra, H.P. (Contractor).
3. The General Manager, M/s Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC, City Madhapur, Hyderabad, Andhra Pradesh c/o Shri B.D. Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Contractor). *...Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Gaurav Pathania, Adv.

For the Respondent(s) : Sh. K.K. Chaudhary Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of the services of Shri Darshan Lal S/O Shri Jai Karan, R/O V.P.O. Jia, Tehsil Palampur, District Kangra, H.P. w.e.f.01-05-2010 by (i) the General Manager, Vamshi Hydro Energies Pvt. Ltd., Plot No.229, Phase-I Udhogvihar, Gurgaon, Haryana, C/O B.D.Sharma Niwas, Shyamnagar, Dharamshala, H.P. (Principal Employer) (ii) Captain Ramesh Chand, Incharge, Sun Securities Services Avenue, Sainikpur, Secunderbad, Andhra Pradesh C/O Ward No.5, Vinaygali, Village, P.O. & Tehsil Nurpur, District Kangra, H.P. (iii) the General Manager, M/S Lanco Infratech Limited, Plot No.4, Software Unit, Lay Out HITEC City Madhopur, Hyderabad, Andhra Pradesh, C/O Shri B.D. Sharma Niwas, Shuamnagar, Dharamshala, District Kangra, H.P. (Contractor) without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference as well as addendum from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

4. Brief facts as set up in the claim petition revealed that State of H.P. had allotted Baner Hydro Project III to Vamshi Hydro Energies Pvt. Ltd. which was leased out for 40 years. Averments made in the petition revealed that after opening Baner Hydro Project III, respondent no.1 had assigned construction work of project to respondent no.3 to M/s. Lanco Infratech Ltd. on contract basis and said company had invited tenders from various companies for supplying construction materials and labour when M/s. Sun Security Services Head office B II First Avenue Sanikpuri Sikandrabad contacted respondent no.3 for supplying the labour and after due negotiations, contract for labour was assigned to respondent no.2 and after opening the contract, respondent no.2 Sun Security Services had engaged the petitioner on 1.12.2007 as labour on payment of daily wages. The grievances of petitioner and other workers remained that after the engagement by respondent no.2 they insisted upon the management to issue appointment letter and realizing agitation over the petitioner's demand, the management interpolated a labour contract on 1.5.2007. It is alleged that on 1.5.2010 petitioner was retrenched by the respondent no.2 who through his union made complaint to respondents no. 1 to 3 and Labour Inspector-cum-Conciliation Officer who did not initiate any action however vide letter no.11-1/85(Lab)ID/Kangra-2012 dated February, 2012, Labour Commissioner, Govt. of H.P. had directed the Labour Officer, Dharamshala to have individual worker wise demand notice under Section 2-A of the Act containing inter alia their actual dates of engagement and termination and send separate reports. On 21.9.2012 a separate demand notice was sent to the respondents, Labour Officer as well as Labour Inspector Palampur by the petitioner for his illegal retrenchment from service. It is alleged that on 1.12.2007 petitioner had been appointed as labourer by respondent no.3 and his presence was marked in the office of respondent no.3 where he worked till 30.4.2010. The grievances of the petitioner also remains that on 1.5.2010 petitioner was illegally retrenched by the respondent no.2 whereas he was under employment with the respondent no.3 and no notice of retrenchment was individually served upon the petitioner by the respondents. It is alleged that on 1.5.2007 respondent no.3 entered into a contract with the respondent no.2 in which petitioner was shown as employee from 24.1.2008 whereas the petitioner was working with the respondent no.3 since 1.12.2007 and the respondents no. 2 and 3 while doing so, did not obtain consent of petitioner which the respondents no.2 and 3 entered into contract which stated to be against the provisions of the Act and ratio laid down by the Hon'ble Supreme Court in **AIR 1970 SC 823 and 1968 SCR (2) 272** as referred to in claim petition. It is alleged that when petitioner came to know about aforesaid

contractor- ship, the petitioner on 25.9.2008 made demand to respondents to tell as to how their employment has been changed without their consent and will and thereafter respondent no.3 entered into compromise with union on 16.2.2009 and according to settlement at Sr. no.1, 28 employees were taken who were adjusted in Baner III subject to availability of work and interest including petitioner but the respondent had violated the said settlement registered on 19.2.2009. It is alleged that respondent no.2 in order to satisfy his illegal designs got the blank appointment form signed from the petitioner and other workers which showed falsified record of the services record maintained by respondent no.2. It is alleged that date of appointment of petitioner and other workers are contradictory within the records and even compensation and other benefits had not been accurately computed as per provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity). Thus, the retrenchment of petitioner therefore is stated to be illegal and void ab-initio. The grievance of petitioner also remains that while terminating the services of petitioner, respondent no.1 had not obtained prior permission from Government of H.P. The petitioner also alleges that respondents had not prepared seniority list however junior employees to the petitioner were still working with the respondent no.1 in violation of provisions of the Act. Accordingly, petitioner prays that retrenchment of petitioner and other workers without their consent be declared illegal and wrong and resultantly the retrenchment of petitioner and other workers illegal which was contrary to provisions of Section 25-F and 25-N of the Act and retention of junior workers on the roll of management also violated the provisions of Section 25-G of the Act. Accordingly, prayed for setting aside illegal retrenchment of petitioner and further prayed for reinstatement and all other consequential benefits.

5. The respondents no. 1 to 3 contested claim petition, filed joint reply inter-alia taken preliminary objections of maintainability, acquiescence, petitioner having not come to the court with clean hands, claim being bad for mis-joinder and non-joinder of the party respondent no.2 and jurisdiction. On merits admitted that project was assigned to respondent no.1 who engaged respondent no.3. It is contended that in pursuance to work allotted to respondent no.2 petitioner was engaged as unskilled labourer on 01.12.2007 however respondents allege that petitioner is stated to have prepared false documents with intention to mislead this Tribunal. It has been denied that petitioner was engaged by the respondent no.1 and the same was transferred to respondent no.2 on 1.5.2007 rather after completion of project work, respondent no.3 had issued written order to respondent no.2 to disengage unskilled labourer as project having no need of said workers and consequently respondent no.2 i.e. Sun Security Services had paid one month's additional salary in lieu of notice of retrenchment compensation and disengaged the services of petitioner. Hence, the petitioner has received entire dues from M/s. Sun Security Services the fact that petitioner was as unskilled labourer on payment of daily wages on 1.12.2007 copy of attendance register cum wages roll duly signed by the petitioner. Thus, petitioner was retrenched from Baner Project III after completion of the project and while project of respondent no.1 was completed, respondent no.2 had made one month salary in lieu of retrenchment compensation and due to non availability of work in the site. It is also the case of respondent no.2 they be asked petitioner to join in other projects but he denied. Accordingly, petition was sought to be dismissed.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/ A under Order 18 Rule 4 CPC, Mark-A documents relates to the workers, copy of letter dated 30.4.2007 Mark-B, copy of letter dated 7.3.2012 Mark-C, copy of conciliation Mark-D, Ex. R1 copy of register of workmen, Ex. R2 copy of recruitment application, Ex. R3 copy of payment roll, Ex. R4 & R5 are copies of attendance register, Ex. PA11 to Ex. PA25 copies of various documents and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Ramesh Chand as RW1, tendered/proved his affidavit Ex. RW1/A, Ex. RW1/B copy of EPF detail, Ex. R1 copy of workmen register, Ex. RW1/C copy of

retrenchment order, copy of retrenchment notice Ex. RW1/D copy of notice, copies of various documents Ex. RA1 to RA2 and closed evidence.

8. I have heard the counsel representing petitioner and ld. counsel. for respondent, gone through records as well as written arguments of the case carefully.

9. From the contentions raised, following issues were framed on 30.05.2015 for determination:

1. Whether the termination of the services of petitioner by the respondents w.e.f. 1-05-2010 is/was illegal and unjustified as alleged? ... *OPP.*
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*
3. Whether the claim petition is not maintainable in the present form as alleged? ... *OPR.*
4. Whether the claim petition is barred by his act and conduct as alleged? ... *OPR.*
5. Whether the petitioner has not come to the court with clean hands as alleged? ... *OPR.*
6. Whether the petitioner has concealed the material facts from Court as alleged? ... *OPR.*
7. Whether the claim petition is bad for non-joinder of necessary parties as alleged? ... *OPR.*

Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Yes

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Issue No.5 : No

Issue No.6 : No

Issue No.7 : No

Relief : Claim petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. It is admitted case of the respondent no.2 who has also filed joint reply to the claim with respondents no. 1 and 3 that respondent no.1 Vamshi Hydro Energies Pvt. Limited is a principal employer whereas respondents no. 2 and 3 are the contractors. It is equally admitted case of the respondent no.2 that he was engaged by respondent no.1 a principal employer and respondents no.2 and 3 engaged to supply casual labourers. Above stated facts have been revealed by respondent no.2 as RW1 in cross-examination which has to be read against all the respondents more particularly when they have filed joint reply having similar stand. Admittedly, petitioner was disengaged by respondent no.2 preceded notice Ex. RW1/D notifying all the security workmen deployed in IKU-II, Banner-III, Rait Store and Dharamshala having been declared surplus and were advised to collect full and final payment including one month's notice pay wages and retrenchment compensation. The case of the respondent no.2 remains that since the work of project was complete, retrenchment was necessary whereas the case of petitioner remains that he was retrenched in violation of provisions of Section 25-F as well as Section 25-N of the Act in which the permission of the appropriate government was not sought. To appreciate the merits of the claim of petitioner, it would be relevant to go through his testimony as PW1 petitioner who has sworn his affidavit Ex. PW1/A. In cross-examination, he has admitted that respondent no.1 has installed project as per instruction of the government and shown ignorance if respondent no.1 had given contract to respondent no.3. Significantly, petitioner has stated that when he was being called to do work with Sun Security Services respondent no.2, respondent no.1 had engaged respondent no.3 Lanco Infratech Ltd. from whom claim was settled. PW1 has categorically deposed in affidavit that management of all the respondents was common and consequent upon award of the project/works and induction of M/s. Lanco Infratech for execution, the workers were initially engaged by the management of the awardees of works but transferred to Lanco Infratech Ltd. Another grievance of workers remained that the issuance of appointment letters in their favour whereupon agitated over, the management interpolated a labour contract with respondent no.2 (Captain Ramesh Chand) and on 1.5.2010 petitioner was retrenched by respondent no.2 when petitioner aggrieved through his union on 17.7.2010 made complaint qua his grievance to respondents no. 1 and 3 as well as Labour Inspector Kangra but no action was taken by any of the parties as stated above. However, vide letter no.11-185(Lab)ID/Kangra-2012 the Labour Commissioner of Himachal Pradesh had directed the Labour Officer Dharamshala to have individual worker wise demand notice under Section 2-A of the Act revealing date of termination and engagement and separate demand was sent on 21.9.2012 to the respondents.

13. PW1 petitioner has deposed on oath that on 1.12.2007 he was appointed as labour by respondent no.3 and his attendance was marked in respondent no.3's office meaning thereby petitioner claims to have worked for 3 and ½ years continuously with the respondents but petitioner was illegally retrenched by respondent no.2 who was under the employment of respondent no.3. Significantly, PW1 also revealed that on 1st May, 2007, respondent no. 3 entered into contract with respondent no.2 showing as their employee from 24.1.2008 whereas petitioner was working with the respondent no.3 since 1.12.2007 and even consent of petitioner was not obtained by either of the employers. The petitioner and other workers felt aggrieved when learnt about change of contract and his employment when petitioner through his union made statement to respondents to show as to how the employment has been changed without their consent whereupon respondent no.3 entered into written compromise on 16.2.2009 and as per written settlement at serial no.1, 20 employees were taken to be adjusted with Banner-III according to their ability and interest and thus respondent no.1 violated the settlement dated 19.2.2009. The petitioner further alleges that

compensation and other benefits given though receipt was not accurately computed as per Section 25-F of the Act but there was falsification of service record maintained by the respondent no.2. Allegation qua non compliance of provisions of Section 25-N of the Act was also stated to have not been complied with which is in flagrant violation of Section 25-N of the Act as no permission of retrenchment from government was obtained by the respondents. Moreover, respondents did not prepare any seniority list and junior employee to the petitioner were still working with respondent no.1 which is in violation of the provisions of Section 25-G of the Act. Accordingly, petitioner has reiterated his entire case as narrated in the claim petition. Statement on oath of (PW1) further revealed that respondent was unregistered contractor and the same was in breach of Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970 and as such the principal employer is solely liable for claims filed by the petitioner. Since respondent no.2 was not authorized to retrench petitioner, the retrenchment was illegal and compromise dated 16.2.2009 with the management which clearly showed that respondents no.1 to 3 had undertaken to absorb the petitioner and other workers in the project who deliberately violated the compromise so as to avoid legal liability. It has been emphatically denied that work of project was completed in all respect or that Sun Security Services had been given offer to petitioner to join Sun Security Services or its another projects. The collective stand of respondents clearly shows that they were jointly taking action against worker. Before referring to the examination of petitioner, it would be relevant to go through the documentary evidence adduced by petitioner in support of his claim.

14. As stated above, that the only respondent examined has admitted that respondent no.1 was principal employer and respondents no.2 and 3 were contractors. Ex. PA 20 is application of registration of establishments employing contract labour which shows that respondent no.3 was the contractor. In Ex. PA application for respondent Lanco Infratech Ltd. is shown as principal employer whereas respondent no.2 is shown as contractor. Ex. PA-23 letter dated 30.4.2007 on work order for provided manpower for projects sites sent by Sun Security Services. Ex. PA 24 is the copy of compromise dated 25.9.2008 in which demands made by workers union were sent to Labour Inspector according to which management obtained responsibility to absorb 28 employees whose services were terminated. Ex. R1 is the register of workers showing petitioner as employee of the respondents. Ex. R2 is application for recruitment of Darshan Lal. Similarly Ex. R3 is the pay bill for the period from 26.11.2007 to 25.12.1007 of petitioner and vide this pay bill petitioner has acknowledged to have received a sum of Rs.2160/-. The case of the respondents remained that entire retrenchment compensation required under Section 25-F of the Act has been paid preceded by Ex. RW1/D which is notice issued by Sun Security Services to the concerned worker and security personal. As such, from document issued by Sun Security Services, respondent no.2 all aspects concerning retrenchment compensation had been paid to the petitioner. Be it noticed that none from the respondent side has turned up to depose that all dues such as salary and notice period had been paid to the petitioner. Similarly, there is no iota of evidence on record to establish that three month's advance envisaged under Section 25-N of the Act was even followed by the respondents while retrenching the petitioner who had rendered more than three years service. A bare glance at the receipt referred to above revealed that it bears signature of the petitioner but receipt in question nowhere stipulates as to how much amount was for the salary and how much was for the notice period. As such, a serious ambiguity has arisen in defence of respondent vide which they had asserted to have paid entire amount compensation including notice period. In any case, receipt did not disclose manner of computation and different head payment had been made. It is unclear from this receipt that respondents had paid entire retrenchment compensation as required under Section 25-F of the Act to him. Ex. RW1/E is notice issued by Sun Security Services to the all concerned workers and security persons. As such, from documents issued by Sun Security Services, it revealed that all aspects of retrenchment compensation had been paid to petitioner by it but question which remains to be considered is that when respondent no.3 and consequently respondent no.2 are working for respondent no.1 the liability for wrongful retrenchment under Section 25-F for Industrial Disputes Act has to be fixed up for all the respondents.

15. Ld. counsel for petitioner has taken me through details records of various employees working with Vamshi Hydro Energies Pvt. Ltd. Ex. PA which shows that deduction of GPF were made through Vamshi Hydro Energies Pvt. Ltd. i.e. respondent no.1 which goes to show that various employees including petitioner had remained on the establishment of respondent no.1 whose services were terminated during service period. The GPF deposit distinct connects name of establishment i.e. respondent no.1 with petitioner. Ex. RW1/B shows that details of 33 workers regarding PF Number AP/Hyd/51324. In this document petitioner figured at serial no.36. Ex. PA shows the annual contribution period from 1st April, 2005 to 31st March, 2010 showed Employees Provident Fund and The Employees Family Pension Scheme and name of petitioner was mentioned at serial no.36 i.e. Ex. PA. Abovestated documents prepared by respondent no.1 establish that petitioner was employee of respondent no.1.

16. In so far as change of employer i.e. respondent no.3 to respondent no.2 is concerned, this fact including respondent no.1 being principal employer has not been disputed by respondents in their reply but said change of employment could not be done without consent of the worker as has been held by the Hon'ble Apex Court in judgment reported in **AIR 1989 1577** case titled **Jawaharlal Nehru University vs. Dr. K.S. Jawatkar & Ors.** It was observed by the Hon'ble Apex Court 'the contract of service entered into by respondent was a contract with the appellants university and no law can convert that contract into a contract between the respondent and Manipur University without automatically making it, either expressly or by necessary implication, subject to the respondent's consent, notwithstanding any statutory provisions to that effect whether in the Manipur University Act or otherwise. It was clearly held that no employee could be transferred without his consent between one employer to another as expressed or implied. Similar view was taken by the Hon'ble Supreme Court reported in **AIR 1970 823** titled **Manager, M/S. Pyarchand vs. Omkar Laxman Thange & Ors.** The relevant para of this judgment reproduced below:

"Industrial Dispute. Transfer of employment from one employer to another—such transfer must be preceded by termination of employment with first employer and a new contract—Establishment to whom services of employee are lent by employer has no right to dismiss employee from service".

17. Thus arrangement made by respondent no.3 of its own so as to save situation changed the employer in which consent of petitioner was not taken and in view of the judgments of Hon'ble Apex Court reported above the employer could not be changed without consent of petitioner and as such change of employer as claimed by respondents was not binding on petitioner. Similarly, attendance of petitioner being marked in the attendance register of respondent no.3 cannot be treated as acceptance of change of employer rather it was arrangement made by the respondent no.3. Another aspect of the matter which has been highlighted in the case is that respondent no.3 was not registered contractor whose act would not bind principal employer who is not stated to be registered under Section 12 of the Contract Labour (Regulations & Abolition) Act, 1970. Suffice would be to state here that respondent no.2 made admission on oath the aspect qua relationship subsisting between respondent no.1 and respondents no. 2 and 3. Therefore even if the principal employer contractor are not registered under the relevant provisions of the Contract Labour (Regulations & Abolition) Act, 1970 they have to face penal consequence envisaged under the Act as has been held by the Hon'ble Apex Court in **Dina Nath vs. National Fertilizers Ltd. (Civil Appeal No.2355 of 1991)** reported in **AIR 1992 (SC) 457 & 1992(1) SCC 695**, the relevant para is reproduced below:

"...Contract labour. principal employer not getting registered under Section 7 and Contractor not getting licence under Section 12. Persons employed by Principal employer through Contractor would not become employees of Principal employer. Principal employer and the Contractor are only liable for prosecution for violation of Sections 7 and 12. ..."

It was observed that 'Act' merely regulates the employment of contract labour in certain establishments and provides for its abolition in certain circumstances. The Act does not provide for total abolition of Contract labour but it provides for abolition by the appropriate government in appropriate cases under Section 10 of the Regulation and Abolition Act.

18. Ld. counsel for respondents has relied upon in **1991(1) SCT 156, 1990 (7) SLR 10** titled as **Mukhtiar Singh vs. Regional Manager, F.C.I.** In this judgment Hon'ble Punjab and Haryana High Court has held that petitioners who were appointed as security guard by FCI had engaged them through agency of contractors. It was held that they were held not employees of the corporation as no relationship of master and servant existed between them and such termed as contract labour engaged through contractor. Applying the ratio of above stated judgments it was necessary that relationship of master and servant must exists directly so as to establish claimant and employer relationship but case in hand of the respondents hand in gloves in each other are trying to defeat the claim of the petitioner and other co-workers who had rendered three years service in the projects awarded to respondent no.1 through respondent no.2 called for retrenchment and appointment and consequently the Sun Security Services respondent no.2 had accepted and supplied the labour and while retrenching also the same process was followed as respondent no.1 and respondent no.3 did not figure in the retrenchment process but respondent no.2 was following all the instructions of principal employer in retrenching petitioner in phased manner. As such, judgment of **Mukhtiar Singh's** case (supra) did not apply since all the respondents in connivance with each other were retrenching workers. This fact shows from the Ex. RW1/D stipulating that Sun Security Service had notified all Sun Security Service workmen deployment IKU-II, Banner III, Rait Store and Dharamshala sites of Lanco Infratech Ltd. to seek their full and final settlement between 30th April and 1st May. This notification also shows that these stores for the project sites were belonged to Lanco Infratech Ltd. for the purposes of recruitment where the respondent no.2 had deployed and those have been required as the staff gone surplus and no more required. Admittedly, respondent no.2 Captain Ramesh Chand Sun Security Services has not whispered even a single word that his company or other principal employer and contractor had sought permission from appropriate government in terminating the services of petitioner. Moreover, facts revealed in cross-examination in manner defeated claim of petitioner.

19. Section 25-N deals with conditions precedent to retrenchment of workmen. It provides that 'a workman who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until workman has been given three months notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice wages for the period of the notice'. Chapter V-A of the Industrial Disputes Act deals lay off and retrenchment. Section 25-N clearly deals with permission which is to be mandatorily obtained from the appropriate government. Before retrenchment in the case in hand, the respondents have raised multiple plea as they have stated that project was complete and said petitioner and other workman were surplus and in their action for retrenching the petitioner and all several workmen and petitioner were declared surplus but there is no iota of evidence on record to show that petitioner was declared surplus at any point of time. List of contractors as envisaged Ex. PA 22 provides respondent no.2 had valid licence upto 19.11.2011 which goes to show that contractor was registered as required under law.

20. Enough has been emphasized by ld. counsel for the respondents that petitioner has received all the full and final settlement claim from respondents and therefore petitioner cannot agitate claiming violation of the Section 25-F of the Industrial Disputes Act. In support of their plea reliance has been placed on receipt Ex. R3 which is undated and appears to be having signature of petitioner which has been admitted by PW1 in cross-examination. This receipt does not bear any date which could substantiate the plea of respondents that same was full and final settlement after notification. Moreover, it does not disclose that out of Rs.2160/- what was amount as retrenchment

compensation and how much was salary and other dues payable to the petitioner. The jointly plea of respondents that work of project had got completed and for said reason retrenchment could be made carries no substance as notice under Section 25-F of Industrial Disputes Act does not stipulated so. Again the retrenchment being made of the insistence of respondent no.1 clearly shows that respondent no.2 was acting on behalf of respondent no.1 irrespective of fact that respondent no.2 was engaged by respondent no.3 who had been engaged by respondent no.1. As such, this receipt is not of much help to the respondents on the point of full and final settlement of retrenchment compensation. This plea that while retrenching one month's pay was not made to him and no more from the respondent side had turn up to depose that the receipt calculated amount was retrenchment compensation. It has come in the evidence that petitioner has worked from 1.12.2007 and he was appointed by respondent no.2 and his attendance of daily attendance register was marked till 30.4.2010 and at the same time petitioner was illegally retrenched. Thus, claim petition on record filed by petitioner clearly indicates that he had worked for 240 days as required under law more particularly there is no cross-examination of respondent on this point and thus it has to be accepted that petitioner had worked for 240 days and at the time termination of services of petitioner no retrenchment compensation had been paid to him under provisions of Section 25-F of the Act as well as three months pay in advance for retrenchment within the ambit of Section 25-N of the Act. Again there is no iota of evidence on record to show that respondents had obtained permission from the appropriate government as required under Section 25-F of the Act. As such, retrenchment was made by respondent no.2 at the behest of respondent no.3 and respondent no.1 is palpably illegal and wrong which cannot legally sustained within the ambit of Industrial Disputes Act. In view of foregoing discussions, it is held that the services of petitioner had been illegally and unjustified manner terminated by respondents w.e.f. 1.5.2010. Accordingly, issues no.1 and 2 are decided in favour of petitioner and against the respondents.

ISSUE NO.3

21. The claim petition could also be stated to be not maintainable as against the respondent as has been argued by ld. counsel for respondents. Observations made in the foregoing paragraphs clearly legate that respondents having each other recruited petitioner and other co-workmen who were terminated in one lot without assigning any stipulate reason not even requirement of provisions of Sections 25-F and 25-N of the Act. As such, petitioner can legitimately agitate his claim before this Tribunal for redressal of his grievance. Issue no.2 is answered in negative.

ISSUE NO.4

22. Ld. counsel for the respondents has contended with vehemence that petitioner has received full and final payment all his claim from respondents company and therefore subsequent claim petition does not lie. As has been discussed in my findings on foregoing paragraphs that Ex. RW1/D does not stipulate in specific date when this amount was disbursed to petitioner either receipt does not reveal amount of retrenchment compensation if any paid to the petitioner which manifestly violates the provisions of Sections 25-F and 25-N of the Act. Thus, when retrenchment process resorted to by respondent no.2 was contrary to the provisions of Industrial Disputes Act, petitioner was not estopped from seeking his claim for reengagement by filing claim petition in pursuance to reference received from appropriate government. Issue no.3 is accordingly decided in negative.

ISSUES NO.5 & 6

23. These issues were not pressed by the ld. counsel for the respondents and these issues are decided as unpressed in favour of petitioner and against the respondents.

ISSUE NO.7

24. It has been contended by ld. counsel for respondents that petition is bad for non joinder of necessary parties. It has not been pleaded in what manner claim petition is bad for non joinder of necessary parties. By merely alleging that claim petition is bad for non-joinder of party is not sufficient as it was to be pleaded as to who were necessary parties. That being so, petition is held not bad for non-joinder of necessary parties, hence, this issue is answered in negative against respondents and in favour of petitioner.

RELIEF

25. As sequel to my findings on foregoing issues nos. 1 to 6, the reference/claim petition is allowed partly. The respondent nos.1 to 3 are hereby directed to re-engage the petitioner forthwith. The petitioner shall be entitled to seniority and continuity in service from the date of his illegal termination with further direction to all the respondents to pay a sum of Rs.30,000/- jointly and severally to the petitioner for the mental harassment which has he suffered during the course of litigation. The amount of compensation so awarded will be paid by the respondents to the petitioner within three months from today failing which the respondents shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization. In the peculiar circumstances of the case, the parties are left to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

Presiding Judge,

Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P.

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 424/2015

Date of Institution : 11.09.2015

Date of Decision : 20.01.2017

Shri Ramesh Kumar s/o Shri Sonnu Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *...Petitioner.*

Versus

Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. *....Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

Petitioner : Sh. N.L. Kaundal, AR
: Sh. Vijay Kaundal, Adv.

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

"Whether the industrial dispute raised by the worker Shri Ramesh Kumar S/O Shri Sonnu Ram R/O Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, before the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. vide demand notice dated 27.01.2010 regarding his alleged illegal termination of services w.e.f. 09.02.2004 suffers from delay and latches? If not, Whether termination of services of Shri Ramesh Kumar S/O Shri Sonnu Ram R/O Village Riyur, P.O. Dharampur, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09.02.2004 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits, exgratia and engagement in service on compassionate grounds as per prevailing policy of Himachal Pradesh State Govt. regarding dies in harness cases, Smt. Champa Devi W/O Late Shri Ramesh Kumar is entitled to from the above employer on account of service rendered by her late husband?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed statement of claim.

3. Brief facts narrated in the claim petition filed by widow of Shri Ramesh Kumar revealed that her husband late Ramesh Kumar was appointed by the respondent on daily wage basis w.e.f. 11.10.1998 on muster roll as beldar who continued to work till 8.2.2004 having completed 240 days in last 12 calendar months preceding months from date of his retrenchment i.e. 9.2.2004. As such, service of late Shri Ramesh Kumar have been disengaged w.e.f. 9.2.2004 after paying retrenchment compensation under Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity) vide notice no. 13888-90 dated 23.1.2004 due to surplus engagement on daily waged worker in Dharampur Division. It is alleged that while retrenching petitioner's husband principle of 'Last come First go' was not followed as some junior workmen namely Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) and thus by retaining juniors and terminating services of senior manifestly violated provisions of Section 25-G of the Act. It is alleged that after termination of the services of petitioner's husband, so many workers had been appointed namely Pardeep Kumar (23.11.2007), Lekh Raj (11/2004) and Satya Devi (27.1.2011) but petitioner's husband has not been given any opportunity. Averments made in the petition further revealed that order dated 9.2.2004 concerning termination of several other workers working with deceased Ramesh Kumar has been set aside by the Hon'ble High Court of H.P. with directions to the respondent to reinstate all such workers with the seniority and continuity along-with Rs.50,000/- as back wages as lump sum compensation. It is also stated that order of Hon'ble High Court had not been assailed by the respondent and reinstated workmen in service whose favour the Hon'ble High Court had passed the award however petitioner's husband was not reinstated and no opportunity of reemployment had been given by respondent and junior persons had been engaged. Feeling aggrieved with the action of the concerning the petitioner's husband industrial dispute was

raised vide demand notice dated 12.11.2009 copy of demand notice had been forwarded to the Labour Officer, Mandi who had tried to settle the dispute but the same could not be resolved between the parties. The husband of petitioner stated to have expired on 1.12.2011 whose death certificate exists on record as well as legal heir certificate. The grievance of petitioner also remains that appropriate government had not referred dispute of petitioner's husband for adjudication to this Court and declined to refer the case for adjudication on the ground that case was not in existence and faded away with passage of time and no cause of action survived in favour of the petitioner. Vide order dated 7.7.2015 Hon'ble High Court of H.P. in CWP no.2989/2015 had directed the Labour Commissioner to refer the dispute to Labour Court for adjudication. Similar case of one Sanjay Kumar was allowed by the Hon'ble High Court and delay of 11 years too was condoned. The dispute raised by husband of petitioner is not on account of any delay but on account of circumstances beyond her control. Accordingly, petitioner's prays for setting aside illegal retrenchment dated 9.2.2004 of deceased Ramesh Kumar with directions to the respondent to treat the services of petitioner's husband in continuous service till date of his death i.e. on 12.1.2011 and also prayed for back wages till 1.12.2011. It is further prayed that respondent be directed to regularize the services of petitioner as her husband had completed eight years on 1.10.2006 and on the basis of policy framed by the State Government and also consider the case of petitioner for employment on compassionate ground as per policy of the State Govt. and to any another relief petitioner is entitled to.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objections of maintainability, delay and laches. On merits, it is contended that petitioner was engaged on June, 1998 and worked till February, 2004 when retrenchment was done in the same month after adopting codal formalities and at the time of retrenchment of deceased petitioner, respondent too had given the retrenchment compensation as provided under Rules. Admitted that some junior daily wages worker had been transferred to Dharampur Division from other Division but their seniority list was not received due to which they had been retained. In Nihal Chand vs. State of H.P. in CWP no.1387/2010 directed the workmen to be paid compensation in addition to notice which they had already received. Delay in filing the claim petition is stated to be fatal to the case of petitioner and the petitioner raised her claim when other workers raised demand notice and that petitioner during his life time was gainfully employed as an agriculturist. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. In order to prove/tender examining Smt. Champa Devi legal heir of deceased petitioner filed her affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of retrenchment notice dated 23.1.2004, Ex. PW1/C copy of demand notice dated 27.1.2010, Ex. PW1/D copy of application dated 6.8.2013, Ex. PW1/E copy of death certificate, Ex. PW1/F copy of legal heir and closed evidence. On the other hand, repudiating the evidence led by the petitioner, respondent examined RW1 Shri Naresh Kumar Gupta, the then Executive Engineer, HPPWD Division Dharampur as RW1 tendered/proved his affidavit Ex. RW1/A and mandays chart Ex. RW1/B and closed the evidence.

7. I have heard the Id. Authorized Representative/counsel of petitioner and Id. Dy. D.A. representing respondent, gone through records of the case carefully relevant for disposed of this case.

8. From the contentions raised, following issues were framed on 09.12.2015 for determination:

1. Whether the industrial dispute raised by petitioner vide demand notice dated 27-01-2010 qua his termination of service w.e.f. 9.2.2004 by respondent suffers from the vice of delay and laches as alleged? If so, its effect? ... *OPP.*

2. Whether termination of services of the petitioner by the respondent w.e.f. 09-02-2004 is/was illegal and unjustified as alleged? ...*OPP.*
3. If issue no.2 is proved in affirmative, to what service benefits the petitioner is entitled to? ... *OPP.*
4. Whether the claim petition is not maintainable in the present form? ... *OPR.*

Relief.

9. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No.1 : Discussed

Issue No.2 : Yes

Issue No.3 : Discussed

Issue No.4 : No

Relief. : Petition is partly allowed awarding compensation Rs.2,00,000/- per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1 TO 3

10. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. Admittedly, Smt. Champa Devi widow of Ramesh Kumar is one of the legal heirs of Ramesh Kumar which corresponds to legal heir certificate Ex. PW1/F document shows that deceased Ramesh Kumar had two children and mother respectively who survive after his death. It is pertinent to mention here that claim petition before this Court was filed by Smt. Champa Devi in which she has prayed for setting aside the retrenchment order dated 9.2.2004 qua her husband having been illegally terminated and sought direction to the effect that services of petitioner's husband be treated as continuous service till his death i.e. on 1.12.2011 with full back wages. It has further been prayed that services of petitioner's husband be regularized after completion of eight years of service w.e.f. 1.10.2006 on the basis of policy framed by the State Govt. with all consequential benefits. Not only this, petitioner also prayed that her case may also be considered for engagement in service on compassionate ground as per policy framed by the State Govt. and to another relief petitioner is entitled.

12. A bare glance at claim petition would reveal that Ramesh Kumar was appointed as daily wage basis with the respondent w.e.f. 1.10.1998 on muster roll beldar who continued to work till 8.2.2004 when his services were terminated after paying the retrenchment compensation under Section 25-F of the Act. It is claimed that petitioner's husband had completed more than 240 days in each calendar year from 1998 to 2004 and that while retrenching the services of petitioner's husband principle of 'Last come First go' was not followed as Prabhu Ram (1.8.1998), Shashi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were retained in service and thus the provisions of Section 25-G of the Act was

not followed by the respondent. Mandays chart Ex. RW1/B on record reveals that petitioner's husband had worked for 107 days in the year 1998, 288 days in 1999, 238½ days in 2000, 164 days in 2001, 165 days in 2002, 198 ½ days in 2003 and 26 ½ days in 2004. Even if we look at the mandays chart, this would show that immediately preceding his termination petitioner's husband has factually worked for 225 days and not 240 days and therefore provisions of Section 25-F of the Act are not applicable and in that situation respondent would not require to either issue notice envisaged under Section 25-F of the Act or to pay wages in lieu thereof. Hence, violation of Section 25-F of the Act has not been proved by the petitioner.

13. In so far as violation of provisions of Section 25-G of the Act is concerned, suffice would be to state here that Prabhu Ram (1.8.1998), Shasi Pal (6.4.1999), Roshani Devi (4.7.1999), Mamta Devi (6.4.2000), Inder Singh (1.1.2000) and Ajay Kumar (1.12.2003) were engaged between 1998 to 2003 when petitioner was alive. In 2004, one Pardeep Kumar s/o Bahadur Singh was appointed on 23.11.2007, Lekh Raj s/o Ram Saran was appointed on 11/2004 and Satya Devi was engaged on 27.1.201 but petitioner's husband was alive and not in job not given opportunity of reemployment which violates the provisions of Section 25-H of the Act. Close scrutiny of the petitioner in cross-examination would reveal that principle of 'Last come First go' was not followed for all the workmen appointed in between 1998 to 2004 whereas petitioner had retrenched in 2004 and thereafter in 2005 several persons were engaged in service but petitioner has not given any opportunity for reemployment. Since the persons mentioned in para 3 of claim petition had been appointed by 1998 to 2003 and thus provisions of Section 25-G of the Act could not be stated to have been violated, Pardeep Kumar, Lekh Raj & Satya Devi had been appointed in 2007, 2004 and 2011 respectively. It is pertinent to mention to state here that as per death certificate issued by Registrar Births and Deaths Ramesh Kumar died on 1.12.2011 which shows that when persons mentioned in para no.4 of the claim petition were engaged petitioner was alive who was not offered reemployment which manifestly violates the provisions of Section 25-H of the Act. From evidence, it is evidently clear that from 1998 till 2004 petitioner's husband was available for job who was not appointed fresh and some persons were allowed to join in service. As such, which is clearly violation of Section 25-H of the Act. Ld. counsel for the petitioner has contended with vehemence that petitioner's husband be treated in continuous service for eight years as he survived between 1998 to 1.12.2011 and for said reason the left period after 2005 be treated as regular period. It is not understood as to how petitioner claim this benefit as petitioner's husband never worked for 240 days in any 12 months preceding termination and thus judgment of Hon'ble High Court reported in **2012 (132) FLR 528 (SC)** titled as **H.S. Rajashekara and State Bank of Mysore and another** does not come to the rescue of the petitioner. Since 240 days were never completed in a year by the petitioner it could not be construed on this score that termination was illegal. Therefore the entire period is to be treated in service. As stated above that the petitioner Ramesh Kumar remained out of job after his termination but there is nothing authenticated in evidence suggesting he remained without earning and petitioner as PW1 has nowhere stated that he had opted out for job when terminating from service. As such, it is held that deceased Ramesh Kumar after his termination was not in government job and cross-examination of PW1 reveals that her husband had been paid retrenchment compensation and notice at the time of retrenchment. Since the respondent had failed to prove on record any seniority list by which it would be stated that persons who were junior to petitioner were retained in service whereas petitioner's husband who was senior to persons mentioned and thus respondent had clearly violated the ratio of judgment of Hon'ble Apex Court reported in **AIR 2015 SC 1373** titled as **Mackinnon Mackenzie & Company Ltd. vs. Mackinnon Employees Union** which mandatorily requires the employer to circulate seniority list as prepared. There is no iota of evidence on record remotely suggesting that respondent had provided seniority list of daily waged workers. As such, plea of petitioner that her husband was ignored and new hands were allowed to join. In view of foregoing discussions, respondent is held to have violated the provisions of Section 25-H of the Act whereas the petitioner has failed to prove violation of provisions of Section 25-F and 25-G of the Industrial Disputes Act. Issues are accordingly decided.

14. Ld. Authorized Representative/counsel for petitioner has relied upon the judgment of Hon'ble High Court of H.P. reported in **2013 Latest HLJ (HP) 632 and 2012 LLR 770** in which the Hon'ble High Court has held that claim of compassionate ground could not be adjudicated by the Labour Court. It has been rightly been contended by the Ld. Dy. D.A. for State that exgratia, engagement on compassionate ground as per the H.P. State regarding dies in harness case are to be enforced for beneficiary by the government while considering the facts and circumstances of the case. It is nowhere stated that after the death of petitioner Ramesh Kumar, the legal heir of deceased petitioner had made any representation before the government.

15. In so far as back wages is concerned, it has been contended that there is no authenticated evidence for entitlement of back wages however benefit of seniority, past service are to be given to the deceased petitioner till the time he was alive i.e. 1.12.2011 and accordingly terminal benefits to be worked out. Accordingly, the compassionate ground plea could not be decided by this Court as it is initially the government which is competent to pass such direction after evaluating the case of petitioner. Ld. Dy. D.A. for State also contended that deceased Ramesh Kumar himself had died and therefore there could be no question of his reinstatement. On the other hand, Ld. counsel for petitioner has claimed seniority, past service benefits of deceased till he was alive. It is further held that plea of job to legal heirs of deceased Ramesh Kumar is not tenable till it is established that representation for his service has been made before the government. As such, judgment **Latest HLJ 2013 (HP) 632** would not be attracted. It may be pertinent to mention here that taking into consideration the dependents of deceased Ramesh Kumar, age of minor children as well as dependent mother and age of petitioner and time taken by in pursuing the matter by issuance of demand notice clearly established the manner in which petitioner could be entitled for compensation in terms of judgment of Hon'ble Apex Court reported in **2013 (136) FLR 893 (SC)** titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** observing that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. Applying the ratio of judgment above stated and that deceased petitioner Ramesh Kumar had rendered service for seven years but demand notice dated 27.1.2010 was made after a period of six years it would be appropriate if the legal heirs of deceased Ramesh Kumar are awarded compensation of Rs.2,00,000/- (Rupees two lakhs only) jointly and disburse the said amount equally amongst the minor children, mother and widow. The judgments titled as **Anil Kumar vs. Himachal Road Transport Corporation and another** reported in **Latest HLJ 2013(HP) 632** would not be applicable as it dealt with compassionate ground appointment and not under any provisions of labour laws. Similarly judgment reported in **2016 (151) FLR 762** titled as **Pawan Kumar vs. District Manager, Deptt. of Telecom and Ors.** would also not be applicable as petitioner has failed to prove having worked for 240 days as required under provisions of Section 25-F of the Act. For the aforesaid reason, issue no.1 is decided in affirmative whereas issues no.1 and 3 are decided as discussed above.

ISSUE NO.4

16. On the plea of non-maintainability of the claim petition under Section 10 of the Industrial Disputes Act, Ld. Dy. D.A. representing respondent department has failed to allege in reply in what manner petition is not maintainable. Thus, vague plea merits rejection outright. Otherwise also, from pleadings and evidence on record, no inference of claim petition being not maintainable could be raised against claimant/petitioner. This issue is decided in favour of petitioner and against the respondent.

RELIEF

17. As sequel to my findings on foregoing issues, the respondent is hereby directed to pay the compensation of Rs.2,00,000/- (Rupees two lakh only) to the petitioner in lieu of the back

wages, seniority, past service benefits, exgratia as well as the other consequential service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from today failing which the respondent shall be liable to pay the interest @ 9% per annum on the said amount from the date of award till the date of its realization however, on receipt of compensation amount by petitioner, it shall be disbursed amongst the other legal heirs as stated above in equal shares. In the peculiar circumstances of the case, the parties are left to bear their own costs.

18. The reference is answered in the aforesaid terms.

19. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

20. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 265/2014

Date of Institution : 27.08.2014

Date of decision : 21.01.2017

Shri Kishan Chand s/o late Shri Sant Ram, r/o Village Saiyain, P.O. Kuddi, Tehsil Bhattiyat, District Chamba, H.P. *...Petitioner.*

Versus

The Divisional Forest Officer, Dalhousie Forest Division, Dalhousie, District Chamba, H.P. *....Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Kishan Chand S/O Shri Sant Ram, R/O Village Saiyain, P.O. Kuddi, Tehsil Bhatiyat, District Chamba, H.P. from time to time during year, 1994 to June, 2012 and finally terminated during June/July, 2012 by the Divisional Forest Officer, Dalhousie Forest Division, Dalhousie, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition revealed that claimant/petitioner was engaged on muster roll basis as daily waged beldar/forest worker and also fire watcher in Bakloh Forest Range of Dalhousie Forest Division Dalhousie in the year 1989 and continued to work with intermittent breaks till 30.6.2012 and on 1.7.2012 respondent/department had verbally terminated services of petitioner and thereafter petitioner had remained unemployed till 28.2.2013 and was again reengaged on 1st March, 2013 and remain working upto 31.12.2013. It is alleged that respondent/department had again terminated services of petitioner from 1.1.2014 when he remained unemployed till February, 2014 and reengaged in the month of March, 2014 and terminated his services w.e.f. 27.12.2014 and thereafter respondent/department had not engaged petitioner till date due to which present claim petitioner has been filed. Averments made in the claim petition revealed that since 1989 till 2014 petitioner had been given fictional breaks in all the years with the object that petitioner did not complete 240 days in each calendar year and thus deprive petitioner from benefit of regularization. The grievance of petitioner also remains that while giving intermittent breaks, junior workers were on roll and allowed to work continuously and thus action of respondent/department was unfair labour practice. It is claimed that petitioner was still working with the respondent/department even on the date of filing claim petition and it has been emphatically denied that petitioner himself had absented from duties of his own. Since the action of respondent in giving intermittent breaks was deliberate although petitioner continued to work uninterruptedly for more than 240 days in a year, the petitioner claims to be entitled for benefits envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act' for brevity). It is also alleged that while giving intermittent breaks by way of passing oral order of termination from time to time overall seniority list of daily waged workers has neither been circulated nor got signed from concerned as such principle of 'Last come First go' has not been followed by the respondent which was to be mandatorily followed within the meaning of Sections 25-G of the Act read with Rule 82 & 83 of H.P. Industrial Dispute Rule, 1974. It is claimed that petitioner had been working with respondent since 1997 on muster roll basis however his juniors Des Raj, Joginder, Tilak Raj, Dhut Ram, Roshan Lal, Mulak Raj who joined the department after his joining were retained in service and regularized thus respondent/department had allegedly committed violation of 25-G of the Act as workers junior to the petitioner still working with respondent/department and their services had not been discontinued by the respondent/department and at the same time petitioner had not been provided work. As such, Section 25-G and 25-H of the Act have been violated by the respondent while terminating the services of petitioner and retaining junior as stated above. While seeking regularization with intermittent break period, petitioner claims to have completing eight years continuous services with 240 days in each calendar year as on 31.12.2001. The petitioner is also aggrieved with in action of respondent in not regularizing his services although he has worked minimum working days in a year. Accordingly, petitioner claims for counting period of intermittent fictional breaks given by way of termination of services from time to time during 1998 till date and respondent be directed to regularize the services of petitioner under eight years regularization policy of State Government upto 01.1.2002 along-with all consequential service benefits in view of CWP no.2735/2008 titled as Rakesh Kumar vs. State of H.P. & Ors. and any other relief claimant/petitioner is entitled to.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits denied that petitioner was engaged on muster roll basis as daily waged beldar/forest worker as well as fire watcher in Bakloh Forest Range initially on 11.7.1989 rather petitioner had worked as daily waged casual labour in the Division on seasonal forestry work as per availability of funds from January, 1994. It is claimed that petitioner had worked with respondent intermittently as per his sweet will and abandoned the job. It is denied that petitioner had worked with the department till 27.12.2014 rather petitioner had worked intermittently till August, 2014 and thereafter left the job at his own sweet will. It has been denied that petitioner ever terminated by the respondent rather petitioner of his own use to come and left the work of his own sweet will and not completed 240 days in any of the years. As such, there was no cause of action to file the present claim and no juniors have been retained or regularized by the respondent. As such, there was no violation of any provisions of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Katoch the then Divisional Forest Officer, Dalhousie as RW1, tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, Mandays chart of Mulkh Raj Ex. RW1/C & seniority list Ex. RW1/D and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years 1994 to June, 2012 and finally June/July, 2012 is/was improper and unjustified as alleged? ...*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
3. Whether the petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Partly yes, partly no

Issue No.2 : Discussed

Issue No.3 : Discussed

Relief : Petition is partly allowed and partly dismissed per operative part of the Award.

REASONS FOR FINDINGS**ISSUES NO. 1 AND 2**

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset it is apt to mention here that petitioner as PW1 in his cross-examination has specifically admitted that he is working with the department even on the date of examination before this Court on 11.8.2015. As such, reference qua final termination of petitioner in the month of June/July 2012 by the Divisional Forest Officer, Dalhousie is not sustainable as factually service of petitioner had not been finally terminated. Moreover, the mandays chart Ex. RW1/B relied upon by the petitioner clearly shows that petitioner was working with the respondent. In the year 2014 petitioner had worked for 106 days. As such, it is held that petitioner has not been finally terminated by Divisional Forest Officer, Dalhousie.

12. In so far as the plea of time to time termination of the services of petitioner and not allowing to him to complete 240 days in each calendar is concerned, suffice would be to state here that as per mandays chart Ex. RW1/B, petitioner has never worked for 240 days from 1994 till 2014. A bare glance at the mandays chart also revealed that in several months petitioner had not given any job either due to paucity of funds and non availability of work as contended by the respondent in its reply. The claim of respondent is that petitioner used to abandoned the job and did not report for duty which is a serious misconduct as it was incumbent upon respondent to have issued notice whenever the petitioner proceeded on unauthorized absence from duty of his own which was not sufficient so as on to establish abandonment of the job which is 'question of fact' to be proved by the respondent. To appreciate the genuineness of the plea so raised by respondent, suffice would be to state here that bald assertion of the respondent cannot be accepted that petitioner willfully absented from his duties as there is nothing corresponding in evidence to show that any letter or intimation was sent to petitioner for his unauthorized absence from his duties as absence from duty is serious misconduct rather it is projected to be case as if petitioner came of his own and worked at his whims. The plea of petitioner, on the other hand remains that fictional breaks were deliberately given to him and that several other persons junior to petitioner namely Des Raj, Joginder, Tilak Raj, Dhut Ram, Roshan Lal, Mulak Raj have been retained/regularized by respondent who were actually not given fictional breaks at any point of time. In order to prove violation of Sections 25-G and 25-H of the Act, the seniority list Ex. RW1/D reveals that the junior persons mentioned above, only one of them namely Mulkh Raj had joined in 1997 much after petitioner and worked continuously for 240 days and other workers had joined the respondent/department prior to the petitioner which goes to show that Mulkh Raj has been assigned regular work having completed 240 days w.e.f. 1.1.2004 but factually joined in service with the respondent on January, 1997. As stated above Mulkh Raj had joined in 1997 corresponds with another mandays chart Ex. RW1/C whereas mandays chart of Kishan Chand petitioner shows that he had joined in the year 1994 and worked for 26 days in the month of January which goes to show that actually Mulkh Raj was junior to petitioner and not senior as contended by the petitioner. Since petitioner was senior to Mulkh Raj, it is established that Section 25-G of the Act has not been violated by the respondent. Rather there is break in service of petitioner in the relevant period and Mulkh Raj being junior to petitioner had not been rightful within the ambit of Section 25-G of the Act. Moreover, RW1 has admitted that as per record no notice was given to petitioner for his absence from duty at any point of time. Since absence from duty is serious misconduct, and there being nothing on record to show initiation of proceeding, plea set forth by respondent qua abandonment of job by petitioner intermittently merits rejection. As such, the plea of fictional break given to the petitioner from the year 1994 to 2012 gets substantiated not only from documentary evidence on record but from testimony on oath of RW1 as well. Although, petitioner being in

employment at the time of passing of award, being given fictional breaks as stated above is duly established but petitioner cannot be deprived of his legitimate right to seek seniority as well as continuity in service from his date of joining along-with other persons working with him. Thus, petitioner could not have been discriminated arbitrarily who has certainly been discriminated as stated in foregoing paras. In view of aforesaid discussion, it is held that time to time termination of the services of the petitioner and giving fictional breaks in service by the respondent during 1994 to 2012 was certainly illegal and unjustified which is manifestly in contravention of provisions of Industrial Disputes Act but as the petitioner is still in employment with the respondent, he is to be given benefit of seniority and continuity in service **except back wages** in the circumstances of the case. It is important to mention here that question of final termination of the services of petitioner could not be established as the petitioner is still on roll of the respondent/department till date. Issues no. 1 and 2 partly decided in affirmative and partly in negative.

ISSUE NO. 3

13. Since in service, petitioner had been illegally given intermittent/fictional breaks by the respondent without any legal procedure, claim petition cannot be stated be maintainable. Hence, this issue is decided in favour of petitioner and against respondent.

RELIEF

14. As sequel to my findings on foregoing issues, petitioner is held to be in continuous uninterrupted service with the respondent from the date of his junior was/were retained or regularized in service and that breaks given by the respondent being fictional in nature shall have no effect on the seniority and continuity of service of the petitioner and his seniority shall be reckoned from date of engagement of his juniors. Accordingly, claim of petitioner is hereby partly allowed and the claim of petitioner is declined on the point of final termination which is not established as the petitioner is still on roll with the respondent/department however, the petitioner shall be deemed to be in continuous service of respondent with all consequential benefits **except back wages**. He shall, however, be considered for regularization by respondent at the time when his juniors have been regularized as per policy governing daily wages as framed by State Govt. and operative from time to time. The parties, however, shall bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

**IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)**

Ref. No. : 263/2014

Date of Institution : 27.08.2014

Date of decision : 21.01.2017

Shri Karnail Singh s/o Shri Babu Ram, r/o Village Nadi Nalla, P.O. Bharari, Tehsil Bhattiyat, District Chamba, H.P. ...Petitioner.

Versus

The Divisional Forest Officer, Dalhousie Forest Division, Dalhousie, District Chamba, H.P.Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Karnail Singh S/O Shri Babu Ram, R/O Village Nadi Nalla, P.O. Bharari, Tehsil Bhattiyat, District Chamba, H.P. from time to time during year, 1998 to June, 2012 and finally terminated during June/July, 2012 by the Divisional Forest Officer, Dalhousie Forest Division, Dalhousie, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition revealed that claimant/petitioner was engaged on muster roll basis as daily waged beldar/forest worker and also fire watcher in Bakloh Forest Range of Dalhousie Forest Division Dalhousie in the year 1997 and continued to work with intermittent breaks till 30.6.2012 and on 1.7.2012 respondent/department had verbally terminated the services of petitioner orally and petitioner was remained unemployed till 28.2.2013 and reengaged on 1st March, 2013 and remained worked upto 31.12.2013. It is alleged that respondent/department had again terminated the services of petitioner from 1.1.2014 when he remained unemployed till February, 2014 and was reengaged in the month of March, 2014 and his services were again terminated w.e.f. 27.12.2014 and thereafter respondent/department had not engaged petitioner till date. Averments made in the claim petition reveal that since 1998 till 2014, petitioner had been given fictional breaks in all the years with the object that petitioner did not complete 240 days in each calendar and thus deprive the petitioner from benefit of regularization. The grievance of petitioner also remains that while giving intermittent breaks, junior workers were on roll and

allowed to work continuously and thus action of respondent/department was unfair labour practice. It is claimed that petitioner was still working with the respondent/department even on the date of filing claim petition and it has been emphatically denied that petitioner himself had absented from duties of his own. Since the action of respondent in giving intermittent breaks was deliberate petitioner claims to have continued to work uninterruptedly for more than 240 days in a year and thus petitioner is entitled for benefits envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act' for brevity). It is also alleged that while giving intermittent breaks by way of passing oral order of termination from time to time and overall seniority list of daily waged workers has neither been circulated nor got signed from concerned. As such, principle of 'Last come First go' has not been followed by the respondent which was mandatorily required to be followed within the meaning of Sections 25-G of the Act read with Rule 82 & 83 of H.P. Industrial Dispute Rule, 1974. It is claimed that petitioner had been worked with respondent since 1997 on muster roll basis however his junior Mulkh Raj who joined the department after his joining was retained in service and thus respondent/department is alleged to have committed violation of 25-G of the Act as workers junior to the petitioner was still working with respondent/department as stated above and their services had not been discontinued by the respondent/department and at the same time petitioner had not been provided the work. As such, Section 25-G and 25-H of the Act have been violated by the respondent while terminating the services of petitioner and retaining junior as stated above. While seeking regularization with intermittent break period petitioner claims to have eight years continuous services with 240 days in each calendar year as on 31.12.2005. The petitioner is also aggrieved with in action of respondent in not regularizing his services although he has worked minimum years of working days in a year. Accordingly, petitioner claims for counting of period of intermittent fictional breaks given by way of termination of services from time to time during 1997 till date and respondent be directed to regularize the services of petitioner under eight years regularization policy of State Government upto 31.3.2006 along-with all consequential service benefits in view of CWP no.2735/2008 titled as Rakesh Kumar vs. State of H.P. & Ors. and any other relief claimant/petitioner is entitled to.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits denied that petitioner was engaged on muster roll basis as daily waged beldar/forest worker as well as fire watcher in Bakloh Forest Range initially on 11.7.1989 rather petitioner had worked as daily waged casual labour in the Division on seasonal forestry work as per availability of funds from July, 1998. It is claimed that petitioner had worked with respondent intermittently as per his sweet will and abandoned the job. It is denied that petitioner had worked with the department till 27.12.2014 rather petitioner had worked intermittently till 2014 and thereafter left the job at his own sweet will. It has been denied that petitioner ever terminated by the respondent rather petitioner of his own use to come and left the work of his own sweet will and not completed 240 days in any of the years. As such, there was no cause of action to file the present claim and no juniors have been retained or regularized by the respondent. As such, there was no violation of any provisions of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Katoch the then Divisional Forest Officer, Dalhousie as RW1, tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, Mandays chart of Mulkh Raj Ex. RW1/C & seniority list Ex. RW1/D and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

Whether time to time termination of services of the petitioner by the respondent during the years 1998 to June, 2012 and finally June/July, 2012 is/was improper and unjustified as alleged?

...*OPP*.

1. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.

2. Whether the petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner as PW1 in his cross-examination has specifically admitted that he is working with the department even on the date of examination before this Court on 11.8.2015. As such, reference qua final termination of petitioner in the month of June/July 2012 by the Divisional Forest Officer, Dalhousie is not sustainable as factually service of petitioner had not been finally terminate. Moreover, the mandays chart Ex. RW1/B relied upon by the petitioner clearly shows that petitioner was working with the respondent. In the year 2014 he had worked for 105 days. As such, it is held that petitioner has not been finally terminated by Divisional Forest Officer, Dalhousie.

12. In so far as the plea of time to time termination of the services of petitioner and not allowing to him to complete 240 days in each calendar is concerned, suffice would be to state here that as per mandays chart Ex. RW1/B, petitioner has never worked for 240 days from 1998 till 2014. A bare glance at the mandays chart also revealed that in several months petitioner had not been given any job either due to paucity of funds and non availability of work as contended by the respondent in its reply. The claim of respondent that petitioner used to abandon the job did not report for duty which is a serious misconduct as it was incumbent upon respondent to have issued whenever the petitioner proceeded on unauthorized absence from duty of his own which was not sufficient so as on to establish abandonment of the job which is question of fact to be proved by the respondent. Thus, plea of abandonment during period of intermittent break does not survive due to unreliable evidence on record. In order to prove violation of Sections 25-G and 25-H of the Act it is

necessary for the petitioner to have established that his junior namely Mulkh Raj had been retained who was junior but the seniority list Ex. RW1/D reveals that said Mulkh Raj had joined in January, 1997 and worked continuously for 240 days till 1.1.2004 which goes to show that although said Mulkh Raj has been assigned regular work having completed 240 days w.e.f. 1.1.2004 but factually joined in service with the respondent on January, 1997. On the contrary, there is no iota of evidence showing petitioner to have worked for 240 days in preceding 12 months, so violation of Section 25-F of the Act is not at all proved. As stated above, Mulkh Raj had joined in 1997 corresponds with another mandays chart Ex. RW1/C whereas mandays chart of Karnail Singh petitioner shows that he had joined in the year 1998 and worked for 62 days in the month of July and August which goes to show that actually Mulkh Raj was senior to petitioner and not junior as contended by the petitioner. Since petitioner was junior to Mulkh Raj, it cannot be stated that Section 25-G of the Act has been violated rather there is break in service of petitioner. In the relevant period Mulkh Raj being senior to petitioner had been rightfully retained within the ambit of Section 25-G of the Act. As such, in the pleadings as well as evidence on record discussed foregoing petitioner is not entitled any relief as claimed by him as he has neither been finally terminated nor there had been given intermittent/fictional break in service of petitioner. Accordingly, both these issues are answered in favour of respondent and against the petitioner.

ISSUE NO. 3

13. Thus, the petition is held to be not maintainable as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by respondent/department who is also held not entitled even compensation in lieu of service rendered by him. Hence, this issue is answered against the petitioner and in favour of respondent.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 264/2014

Date of Institution : 27.08.2014

Date of decision : 21.01.2017

Shri Karam Chand s/o Shri Kirpo Ram, r/o Village Pate-De-Reh, P.O. Bharari, Tehsil Bhattiyat, District Chamba, H.P.*Petitioner.*

Versus

The Divisional Forest Officer, Dalhousie Forest Division, Dalhousie, District Chamba, H.P.*Respondent.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. T.R. Bhardwaj, AR

For the Respondent : Sh. Sanjeev Singh Rana, Dy. D.A.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of Shri Karam Chand S/O Shri Kirpo Ram, R/O Village Pate-De-Reh, P.O. Bharari, Tehsil Bhattiyat, District Chamba, H.P. from time to time during February, 1997 to June, 2012 and finally terminated during June/July, 2012 by the Dalhousie Forest Division, Dalhousie, District Chamba, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. Brief facts as set up in the claim petition revealed that claimant/petitioner was engaged on muster roll basis as daily waged beldar/forest worker and also fire watcher in Bakloh Forest Range of Dalhousie Forest Division Dalhousie in the year 1990 and continued to work with intermittent breaks till 30.6.2012 and on 1.7.2012 respondent/department had verbally terminated the services of petitioner and thereafter petitioner had remained unemployed till 28.2.2013 and was again reengaged on 1st March, 2013 and remain working upto 31.12.2013. It is alleged that respondent/department had again terminated the services of petitioner from 1.1.2014 when he remained unemployed till February, 2014 and reengaged in the month of March, 2014 and terminated his services w.e.f. 27.12.2014 and thereafter respondent/department had not engaged petitioner till date due to which present claim petition has been filed. Averments made in the claim petitioner reveal that since 1990 till 2014 petitioner had been given fictional breaks in all the years with the object that petitioner did not complete 240 days in each calendar year and thus deprive petitioner from benefit of regularization. The grievance of petitioner also remains that while giving intermittent breaks, junior workers were on roll and allowed to work continuously and thus action of respondent/department was unfair labour practice. It is claimed that petitioner was still working with the respondent/department even on the date of filing claim petition and it has been emphatically denied that petitioner himself had absented from duties of his own. Since the action of respondent in giving intermittent breaks was deliberate although petitioner continued to work uninterruptedly for more than 240 days in a year, the petitioner claims to be entitled for benefits envisaged under Section 25-B of the Industrial Disputes Act, 1947 (hereafter referred to as 'the Act' for brevity). It is also alleged that while giving intermittent breaks by way of passing oral order of termination from time to time overall seniority list of daily waged workers having neither been

circulated nor got signed from concerned and as such principle of 'Last come First go' has not been followed by the respondent which was to be mandatorily required to be followed within the meaning of Sections 25-G of the Act read with Rule 82 & 83 of H.P. Industrial Dispute Rule, 1974. It is claimed that petitioner had been worked with respondent since 1990 on muster roll basis however his juniors namely Desh Raj, **Joginder, Tilak Raj, Dhut Ram, Roshal Lal and Mulak Raj** who joined the department much after his joining were retained in services and thus respondent/department alleged to have committed violation of 25-G of the Act. As the workers were junior to the petitioner were still working with respondent/department and their services had not been discontinued by the respondent/department and at the same time petitioner had not been provided work. Section 25-G of the Act is alleged to have been violated by the respondent while terminating the services of petitioner and retaining junior as stated above. While seeking regularization with intermittent break period petitioner claims to have eight years continuous services with 240 days in each calendar year as on 31.12.2004. The petitioner is also aggrieved with in action of respondent in not regularizing his services although he has worked for minimum working days in a year and consequently in more than last eight years. Accordingly, petitioner claims for counting of period of intermittent fictional breaks given by way of termination of services from time to time during 1990 till date and respondent be directed to regularize the services of petitioner under eight years regularization policy of State Government upto 1.1.2005 along-with all consequential service benefits in view of CWP no.2735/2008 titled as Rakesh Kumar vs. State of H.P. & Ors. and any other relief claimant/petitioner is entitled to.

4. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability. On merits denied that petitioner was engaged on muster roll basis as daily waged beldar/forest worker as well as fire watcher in Bakloh Forest Range initially on 11.7.1989 rather petitioner had worked as daily waged casual labour in the Division on seasonal forestry work as per availability of funds from February, 1997. It is claimed that petitioner had worked with respondent intermittently as per his sweet will and abandoned the job. It is denied that petitioner had worked with the department till 27.12.2014 rather petitioner had worked intermittently till 2014 and thereafter left the job at his own sweet will. It has been denied that petitioner ever terminated by the respondent rather petitioner of his own use to come and left the work of his own sweet will and not completed 240 days in any of the years. As such, there was no cause of action to file the present claim and no juniors have been retained or regularized by the respondent. As such there was no violation of any provisions of the Industrial Disputes Act. Accordingly, petition was sought to be dismissed.

5. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

6. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Rakesh Katoch the then Divisional Forest Officer, Dalhousie as RW1, tendered/proved his affidavit Ex. RW1/A, mandays chart of petitioner Ex. RW1/B, Mandays chart of Mulakh Raj Ex. RW1/C & seniority list Ex. RW1/D and closed evidence.

7. I have heard the Authorized Representative/counsel representing petitioner and Id. Dy. D.A. for respondent, gone through records of the case carefully.

8. From the contentions raised, following issues were framed on 07.07.2015 for determination:

1. Whether time to time termination of services of the petitioner by the respondent during the years February, 1997 to June, 2012 and finally June/July, 2012 is/was improper and unjustified as alleged? ...OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ...*OPP*.
3. Whether the petition is not maintainable in the present form as alleged? ...*OPR*.

Relief.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

10. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

11. At the outset, it is apt to mention here that petitioner as PW1 in his cross-examination has specifically admitted that he is working with the department even on the date of examination before this Court on 11.8.2015. As such, reference qua final termination of petitioner in the month of June/July 2012 by the Divisional Forest Officer, Dalhousie is not sustainable as factually service of petitioner had not been finally terminated. Moreover, the mandays chart Ex. RW1/B relied upon by the petitioner clearly shows that petitioner was working with the respondent. In the year 2014 when he was working for 101 days as such it is held that petitioner has not been finally terminated by Divisional Forest Officer, Dalhousie.

12. In so far as the plea of time to time termination of the services of petitioner and not allowing to him to complete 240 days in each calendar is concerned, suffice would be to state here that as per mandays chart Ex. RW1/B, petitioner has never worked for 240 days from 1997 till 2014. As such, provisions of Section 25-F of the Act are not attracted. A bare glance at the mandays chart would also reveal that in several months petitioner had not been given any job either due to paucity of funds or non availability of work as contended by the respondent in its reply. The claim of respondent remains that petitioner used to abandon the job who did not report for duty which is a serious misconduct and it was incumbent upon that respondent to have issued notice/letter whenever the petitioner proceeded on unauthorized absence from duty of his own which was not sufficient so as on to establish abandonment of the job which is question of fact to be proved by the respondent. Thus, plea of abandonment during period of intermittent break does not survive due to unreliable evidence on record. In order to prove violation of Sections 25-G of the Act, it was necessary for the petitioner to have established that his juniors namely Des Raj, Joginder, Dhut Ram, Roshan Lal and Tilak Raj had been retained whereas he was senior but the seniority list Ex. RW1/D reveals that said Des Raj, Joginder, Dhut Ram, Roshan Lal and Tilak Raj had joined in February, 1992 and who worked continuously for 240 days till 2005 which goes to show that although said persons stated above have been assigned regular work had completed 240

days upto 2005 but factually joined in service with the respondent on January & February 1992 respectively whereas mandays chart of Karam Chand petitioner shows that he had joined in the year 1997 and worked for 88 days in the month of February, March and August which goes to show that actually the persons mentioned in the seniority list Ex. RW1/D were senior to petitioner and they were not juniors as contended by the petitioner. Since petitioner was junior to Des Raj, Joginder, Dhut Ram, Roshan Lal and Tilak Raj, it cannot be stated that Section 25-G of the Act has been violated. Rather there is break in service of petitioner in the relevant period and the persons stated above being senior to petitioner had been rightfully retained within the ambit of Section 25-G of the Act. As such, in the pleadings as well as evidence on record discussed foregoing, petitioner is not entitled any relief as claimed by him as he has neither been finally terminated nor there had been given intermittent/fictional break in service of petitioner given deliberately by respondent. Accordingly, both these issues are answered in favour of respondent and against the petitioner.

ISSUE NO.3

13. Thus, the petition is held to be not maintainable as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by respondent/department who is also held not entitled even compensation in lieu of service rendered by him. Hence, this issue is answered against the petitioner and in favour of respondent.

RELIEF

14. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

15. The reference is answered in the aforesaid terms.

16. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

17. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 50/2008

Date of Institution : 28.2.2008

Date of decision : 21.01.2017

Shri Raj Kumar s/o Shri Bhandru Ram, r/o Village Jamthal, P.O. Harnnora, Tehsil & District Bilaspur, H.P.*Petitione.r*

Versus

1. The General Manager, The Associated Cement Companies Ltd., Gagal Cement Works, Now ACC Ltd., Barmana, District Bilaspur, H.P.

2. Shri Krishnu Ram Sakhyan, Contractor, C/O The Associated Cement Companies Ltd., Gagal Cement Works, Now ACC Ltd., Barmana, District Bilaspur, H.P.*Respondents.*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Shashi Kant Sharma, Adv.

For the Respondent(s) : Sh. T.M.S. Librahan, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether termination of services of Mr. Raj Kumar S/O Shri Bhandru Ram by the The General Manager, The Associated Cement Companies Ltd., Gagal Cement Works, Now ACC Ltd., Barmana, Distt. Bilaspur, (HP), through Shri Krishnu Ram Sakhyan, Contractor, C/O The Associated Cement Companies Ltd., Gagal Cement Works, Now ACC Ltd., Barmana, Distt. Bilaspur, (HP) without giving charge sheet, inquiry and an opportunity to explain his conduct, as well as, without advance notice/pay in lieu of that, retrenchment compensation, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above Employer/Management?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimant/petitioner has filed his statement of claim.

3. In pursuance to order dated 11.4.2016 passed in CWP No.9696 of 2011 along-with CWP No.8108 of 2011 the present case has been remanded by the Hon'ble High Court of H.P. with direction to permit the workman to lead evidence referring to Annexure- R-1/F with further opportunity to all contestants in both the petitions to adduce evidence in rebuttal thereto besides the parties were directed to appear before this Court on 10.5.2016. In pursuance to that Annexure-R-1/F was exhibited before this Tribunal besides opportunity of evidence in rebuttal was adduced at the instance of the contesting parties, Tribunal was directed to file fresh Award within three months. Accordingly, case was registered on its old number.

4. Brief facts as narrated in the claim petition revealed that petitioner was engaged as daily waged labourer by the respondent no.1 through respondent no.2 on 1.7.1996 who worked continuously with the respondents till 2.9.2005. Averments made in the claim petition revealed that respondent no.1 had disengaged petitioner on 2.9.2005 orally and without serving any notice when petitioner raised industrial dispute on 30.12.2005 resulting in the reference from appropriate govt. It is contended that services of petitioner had been disengaged without any notice or retrenchment compensation and at the same time no inquiry, charge-sheet had been served upon the petitioner. Hence, action of respondents in disengaging petitioner without serving any notice and compensation was manifestly unfair labour practice. It is alleged that during services period, respondent no.1 had been deducting provident fund and that petitioner had worked ACC Ltd. Gagal Cement Works where he had worked for more than 240 days in each calendar year. It is alleged that wages were paid by the principal employer and his services were dispensed with by principal

employer and persons junior had been retained by the respondents. It is thus averred that disengagement was done in violation of provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for brevity). Accordingly, petitioner prays for his reengagement by respondent with all other consequential benefits.

5. The respondent no.1 contested claim petition, filed written statement by raising preliminary objection that there was no relationship of employer and employee between the petitioner and respondent as such reference is not maintainable. It is also contended that provisions of Section 2(k) of the Act is not applicable for reason that this Court has no jurisdiction to entertain and try the claim petition. Denied that petitioner was never appointed as daily wages as mazdoor nor he appointed by the principal employer i.e. respondent no.1. It is alleged that respondent no.1 had been awarded contracts of miscellaneous civil repairs to respondent no.2 vide terms dated 1.8.1995, 1.4.1996, 2.1.1997 and 1.10.2002. It is contended that petitioner was engaged by respondent no.2 and thus he was paid wages by the respondent no.2. The respondent has contended in its reply that the respondent no.2 had allocated sub code by EPF authorities in the account of respondent no.1 and respondent no.2 in order to comply the statutory provisions of EPF deposited provident fund of his workers in the said account and thus deposit of provident fund of the contractor does not create relationship of employer and employee between petitioner and respondent no.1 and therefore when petitioner was not employee of the principal employer question of having violated procedure envisaged under Section 25-F of the Act did not arise. The respondent no.2 filed separate reply alleging therein that he was registered contractor of respondent no.1 and the respondent no.1 awarded work of miscellaneous civil repairs vide contracts dated 1.8.1995, 1.4.1996, 2.1.1997 and 1.10.2002 and respondent no.2 had engaged petitioner to execute the said work depending upon work. After completion of contract work the engagement of petitioner automatically came to an end and as per respondent no.2 deducting EFP and depositing the same with the authorities to comply with the statutory requirements of EPF and services of petitioner automatically came to an end after completion of the contract and as such the principle of 'Last come First go' was not followed by the respondents. It has been emphatically denied that petitioner had completed 240 days and thus prays for dismissal of claim petition.

6. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

7. To prove his case, petitioner had examined himself as PW1 tendered/proved his affidavit Ex. PW1/A under Order 18 Rule 4 CPC, Ex. PW1/B copy of EPF slip, Ex. R1 to Ex. R14 copies of attendance register, Ex. PW1/C copy of RTI letter dated 22.5.2015, Ex. R15 to Ex. R19 copies of wage slip, Ex R-20 copy of attendance register and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent no.1 had examined Shri Rajesh Jamwal HR ACC Ltd. Gagal Cement Works Barmana as RW1, tendered/proved his affidavit Ex. RW1/A, copy of identity card of petitioner Mark-1 and closed evidence.

8. I have heard the Authorized counsel representing petitioner and Id. counsel for respondent, gone through records of the case carefully.

9. From the contentions raised, following issues were framed on 18.05.2009 for determination:

1. Whether the petitioner was engaged as daily wager by the respondent 1 through respondent 2. ...OPP.
2. Whether the services of the petitioner were terminated by the respondent 1 or respondent 2 unlawfully. If so, what relief the petitioner is entitled to? ... OPP.
3. Relief.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Petitioner has been engaged by respondent no.2

Issue No.2 : Partly yes by respondent no.2

Issue No.3 : No

Relief : Claim petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO. 1 AND 2

11. Both these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

12. At the outset, it would be apt to mention here that reference of appropriate government does not disclose any specific date/month when services of petitioner had been terminated. It is equally important to mention here that case had been received by of remand with direction to consider Ex. R-1/F relating to EPF account no. HP/10160/2444. Petitioner as PW1 has deposed on oath twice before this Court firstly while on 19.9.2009 when he filed affidavit revealing that he had been engaged at the instance of respondent no.1 by respondent no.2 and on 2.9.2005 he was disengaged without any notice when he raised industrial dispute on 30.12.2005. He has further stated to have worked for 240 days and that he used to receive salary from principal employer i.e. ACC Ltd. Barmana. He has also stated that junior workers were retained who were still working and that petitioner had EPF account no. HP/10160/2444 with M/s. ACC Ltd. Galgal Cement Works, Barmana. Besides maintained that petitioner had not got any job so far and accordingly he prayed for reengagement and other consequential benefits. It would be pertinent to mention here that after being examined on 19.9.2009 petitioner was again examined on 25.6.2016 but in cross-examination he has given altogether different version by stating that his salary was paid by respondent no.2 who used to deduct his EPF. He had stated in earlier statement on record before this Court, on 19.9.2009 that he was employed by respondent no.1 and EPF was deducted by respondent no.1 only after payment of salary. Thus, petitioner has disclosed inconsistently about his employer. The Hon'ble High Court of H.P. while remanding the case to this Tribunal has directed to consider Ex. R-1/F along-with letter written by Assistant PF Commissioner/CAPIO to the applicant regarding supply of information of EPF Account no. HP/10160/2444 of M/s. ACC Ltd. Galgal Cement Works, Barmana.

13. Now question arises for determination as to how respondent no.1 was deducting EPF and depositing whereas petitioner was stated to have engaged at the instance of respondent no.2 where he worked as mazdoor. If petitioner got his EPF deduction and same was deposited by respondent no.1, respondent no.2 could not have deducted the said amount and even by deduction of EPF and deposit in account would not create relationship of employer and employee as has been held by Hon'ble High court of Punjab & Haryana case titled as **Gian Singh and Ors. vs. Senior Regional Manager, Food Corporation of India, Punjab Region, Chandigarh** reported in 1991 (1) PLR 1. The relevant para of this judgment is reproduced below:

"Contract Labour (Regulation and Abolition) Act, 1970 Section 10 and Section 2(1)(e) 7,9,12,23 and 24. Absence of notification by the Central Government prohibiting the employment of contract labour in various godowns and depots of the Food Corporation of

India in Punjab. Food Corporation of India can employ contract labour in Punjab. Persons so employed would remain the employees of the contractor and not of the Corporation. Further held, each godowns of Food Corporation of India. Is a separate establishment. **Such employees employed through the contractor. Would not become employees of the principal employer..."**

14. In the aforesaid judgment it has been held that employees of contractor would not become employees of principal employer. Similar view was reiterated in **Mukhtiar Singh vs. Regional Manager, FCI** reported in **1990 (7) SLR 10** in which Hon'ble High Court of Punjab & Haryana held that petitioners engaged through contractors were not employees of FCI as no relationship of master and servant existed between petitioner and FCI. In another judgment of Hon'ble Apex Court reported in **AIR 1992 (SC) 457 & 1992(1) SCC 695** titled as **Dina Nath vs. National Fertilizers Ltd.** in which Hon'ble Apex Court held that if principal employer was not getting registered contract licence under Section 12, the persons employed by principal employer contractor would not become employees of principal employer. Such inference has also been drawn by the Hon'ble High Court of Punjab and Haryana reported in **2015(3) SCT 509** and **2015 (5) SLR 789**, titled as **Jagbir Singh vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Rohtak** the relevant para of this judgment reproduced below:

"Industrial Disputes Act, 1947 Sections 2(g) and 2(oo) Retrenchment. Employee Employer relationship. Denial of. Burden of proof. Petitioner engaged by contractor and supplied to respondent management as a Horticulture Labour and the same proved by documentary evidence on record. Plea by petitioner that he was appointed by respondent management on daily wages basis as Photostat Operator/Dispatcher. **Burden of proof lay upon the workman to prove that there was relationship of an employee and employer between the parties which he failed to discharge.** No application was moved by the workman before the Labour Court to requisition the relevant record to prove his case. He even chose not to appear in the witness box in support of his claim. Workman covered under two enactments ESI Act and EPF Act and management deposited its share of contributions to meet its obligation under the aforesaid enactments. **This would not mean that workman was appointed by the Management and there as a relationship of employee and employer between the parties. Petition liable to be dismissed..."**

Applying the ratio of this judgment and two other foregoing judgments even though EPF amount was deposited through ACC Ltd. Barmana yet the same would not culminate direct relationship of employer and employee. In absence of relationship of principal employer respondent no.1 and petitioner, it would be unsafe to hold that while deducting payment of EPF would make petitioner as employee of respondent no.1/management. So even when petitioner has succeeded in establishing EPF A/c No. HP/10160/2444 was of ACC Ltd. Barmana and that amount of deduction of EPF was done through accounts of ACC Ltd. Barmana yet petitioner could not be construed to be a employee of respondent no.1 as he primarily remained employee of respondent no.2 as has been deposed on oath. EPF receipt qua A/c No.HP/101602444 of petitioner with ACC Ltd. Galgal Cement Works Barmana as employer could not be taken as routine entry rather even if respondent no.1 had deposited EPF in account of petitioner as aforesaid same can be subsequently recovered from respondent no.2 who had engaged the petitioner as has been held in **2004 (III) LLJ 100** that liability to pay the provident fund would arise even in respect of an employee under a contractor.

15. Under Section 8-A, the amount of contribution paid or payable by the employer may be recovered by the employer from the contractor either by deduction of any amount payable under the contract or as a debt payable by the contractor. From the above provisions, it is clear that the

liability to pay the provident fund is mainly on the principal employer and thereafter it is open to the employer to recover from the contractor. **Therefore, the fact that the petitioner is covered by the Provident Fund Scheme is not relevant for deciding the status of petitioner.** As such, there exists relationship of respondent no.2 and petitioner as employer and employee more specifically petitioner has admitted on oath on 25.6.2016 before this Court that respondent no.2 had paid him salary who used to deduct EPF from salary, thus there could be no involvement of respondent no.1 as it is respondent no.2 who had engaged petitioner in job. Since it has not been brought in evidence either by respondent no.1 and respondent no.2 that they were registered under the relevant provisions of 12 of Regulation and Abolition Act, 1970 they are to simply face the consequences of not getting registered and employee of respondent no.2 could not be treated as employee of respondent no.1.

16. Ld. counsel for the petitioner has contended with vehemence that no notice or wages in lieu thereof had been given by respondent no.2. In support of his contention for number of days petitioner has brought on record attendance register of M/s. Krishanu Ram Sankhyan who was the contractor who has since died. In cross-examination admitted that salary was given to the petitioner by respondent no.2 but what the petitioner could prove number of days he worked i.e. from March, 1999 to October, 1999 and period he worked till 2005. **Since the reference received from appropriate government does not reveal the date of termination yet this can be looked into from the affidavit of petitioner that his services had been terminated on 2.9.2005.** As petitioner has made endeavor to prove that he had completed 240 days in specific years i.e. 1999 till 2005. In 1999 he has worked for 24 days in March, 26 days in April, 1999, 26 days in May, 1999 in June petitioner had worked for 26 days, in July and August, 1999 he had worked for 25 & 26 days. In the month September 1999 he had worked for 26 days and 26 days in October, 1999 aggregating 205 days in a year. In 2005 i.e. from January, 2005 to September, 2005 petitioner is shown to have worked for 220 days that mean in either situation petitioner had not worked for more than 240 days in any of the years. If treat the date of disengagement in September, 2005 immediately preceding 12 months petitioner cannot be stated to entitled for protection envisaged under Section 25-F of the Act. If petitioner was not entitled to protection under Section 25-F of the Act certainly no notice was required to be issued or compensation in lieu was to be paid. Thus, petitioner is held to have failed to prove having worked for 240 days in preceding 12 months from date of his termination. In **Manager RBI Bangalore vs. S. Mani & Ors. reported in 2005(2) SCT 404, AIR (SC) 2179** Hon'ble Apex Court has specifically held that it is for the workman to prove by leading evidence that he completed 240 days service in terms of Section 2(oo) and 25-F of the Act. Thus, it is abundantly clear that burden of lies heavily on the petitioner to prove to have worked for 240 days so as attract protection envisaged under Section 25-F of the Act.

17. It has been vehemently contended by the ld. counsel for the respondent no.1 that no relationship existed between petitioner and respondent no.1 as no contract existed between petitioner and respondent no.1. The respondent no.2 has not brought anything on record to show that petitioner was engaged by respondent no.1 rather Ex. R1 to R14 which has been exhibited by petitioner of no much help to him because working days of 240 days were not established. Therefore, it could not be construed that petitioner was engaged who was working continuously and uninterruptedly worked for more than 240 days. Ld. counsel for the petitioner on the other hand has contended with vehemence that respondents had resorted to contractual employment as device to simply take it out from the provisions of the Industrial Disputes Act and the whole process resorted by respondent would be to circumvent of the provisions of the Industrial Disputes Act. Rather failure of petitioner to have worked for 240 days clearly belies his stand. In the present case the evidence on record clearly shows that petitioner had not worked for 240 days uninterruptedly or atleast in preceding 12 months from his termination as is also evident from Exts. R1 to R14. Since the respondent no.1 is not principal employer case of petitioner would not fall under Section 2(oo) of the Act and same would not be covered in definition of retrenchment as has been held by the

Hon'ble High Court of H.P. in **Manoj Kumar Sharma vs. HRTC and Ors.** reported in **2007 Lab. IC 3308**. Accordingly, no liability could be fastened on respondent no.1 however respondent no.2 could not also fastened with liability moreso petitioner has failed to prove to have worked for 240 days and therefore the liability of Section 25-F of the Act would not be attracted in this case. Although, my predecessor in interest has ordered compensation jointly to the tune of Rs.50,000/- and direction for engagement of petitioner by respondent no.2 but in my findings I have held that there was no relationship of principal employer and workman between petitioner and respondent no.1 and that petitioner had not worked for 240 days preceding his termination, the provisions of Section 25-F would also not apply as no notice was required to be served by either of respondents upon the petitioner. In view of the foregoing discussion issues no. 1 and 2 are decided in affirmative in favour of respondents and against the petitioner.

RELIEF

18. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

19. The reference is answered in the aforesaid terms.

20. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

21. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

IN THE COURT OF K.K. SHARMA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 105/2002

Date of Institution : 23.4.2002

Date of decision : 21.01.2017

1. Shri Rajesh Chand Mehta, VPO Thandol, Tehsil Palampur, District Kangra, H.P.
2. Shri Bir Bhanu Pratap, r/o VPO Sullah, Tehsil Palampur, District Kangra, H.P.
3. Shri Shubh Karan, r/o VPO Arla, Tehsil Palampur, District Kangra, H.P.
4. Shri Shashi Pal Singh, Village Mahal, P.O. Baijnath, District Kangra, H.P.
5. Shri Kuldeep Chand, r/o VPO Rajehar, Tehsil Palampur, District Kangra, H.P.

....Petitioners.

Versus

The Management, M/s. The Palampur Co-operative Tea Factory Ltd., Kalu-Di-Hatti, P.O. Maranda, Tehsil Palampur, District Kangra, H.P.Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner(s) : Sh. Sandeep Kumar, Adv.

For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

1. The following reference has been received from the appropriate Government for adjudication:

"Whether the termination of services of S/Sh. Rajesh Chand, Bir Bhanu Pratap, Shashi Pal, Shubh Karan, Kuldeep Chand, supervisors by the Management of M/S The Palampur Co-operative Tea Factory Ltd., Kalu-Di-Hatti, P.O. Maranda, Tehsil Palampur, H.P. w.e.f. 31.10.2001 without complying the provisions of section 25 F of Industrial Disputes Act, 1947 is legal and justified? If not, to what relief of service benefits the above workmen are entitled to?"

2. On receipt of reference from appropriate government, notices were issued to the parties in pursuance to which claimants/petitioners have filed their statement of claim jointly.

3. In pursuance to judgment dated 5.8.2016 passed by the Hon'ble High Court of H.P. in CWP no.6677/2010, the present case has been received on remand with direction to decide the case afresh on merits after taking note of the judgment passed by the Hon'ble Apex Court and Division Bench of this Court in The Palampur Co-operative Marketing and Consumer Federation Limited case. Before proceeding further, it would be apt to mention here that the Hon'ble High Court has held that Tea Factory is an industry within the meaning of term of industry under the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act for brevity'). This view was reiterated in judgment of Hon'ble Apex Court in **Bangalore Water Supply & Sewerage Board etc. and A. Rajappa and others, AIR 1978 SC 548**. It has been held that employees of industry are workmen entitled to protection envisaged under the Industrial Disputes Act.

4. It is pertinent to mention here that prior to the above said order of the Hon'ble High Court, my Id. predecessor-in-interest in reference no.105/2002 had held vide Award dated 27.11.2006 that any dispute pertaining to cooperative societies would not be covered under the Industrial Disputes Act and any dispute relating to disciplinary proceedings against an employee of co-operative society, jurisdiction of Tribunal is barred and the Registrar of cooperative society is well competent to titrate dispute. As such, dispute touches upon the business and management of the society. Accordingly, the petition was dismissed on ground of jurisdiction.

5. Brief facts as set up in the claim petition revealed that Rajesh Chand Mehta, Shubh Karan, Bir Bhanu Partap, Shashi Pal Singh and Kuldeep Chand were the workmen who joined the Palampur Cooperative Tea Factory on 21.4.1998 as Supervisors and appointments were made in the year 1998 and later on extension was given to them from time to time in service. It is alleged that in the year 1999, petitioners were again appointed by the employer who continued to worked till 31.10.2001 and the services of all petitioners above named were terminated verbally without following the procedure envisaged under the Industrial Disputes Act, however no compliance of the

provisions of the Act had been done by employer and thus the terminations of the petitioners was totally arbitrary in violation of provisions of the Act. The termination orders are also stated to be bad as the Chairman had not issued termination orders but the Manager of the Tea Factory had verbally terminated the services of the petitioners. It is alleged that petitioner had completed 2/3 total number of days in the remainder of the calendar year, the employer/respondent had never sanctioned the leave with wages encashment during services of the petitioners and was not made to the petitioners at the time of illegal termination for their services in 1998, 1999, 2000 and 2001 which is stated to be in violation of the provisions of 79 of the Factories Act, 1948. As such, it is evident that petitioners had actually worked for four years as stated above who were initially engaged temporarily for 89 days and their services were extended but petitioners had ever worker for 240 days for the applicability of the provisions of Section 25-F of the Act. Thus, alleging verbal termination order of petitioners the claim has been made that termination of petitioners be declared as illegal under the Industrial Disputes Act and that petitioners are entitled for back wages with interest @ 18% per month from 31.10.2001 till date and reinstated in service. It has also been prayed that petitioners be paid wages same as that of supervisor and not the clerical cadre from year 1998 when petitioners were initially engaged.

6. The respondent contested claim petition, filed reply inter-alia taken preliminary objection of maintainability, petition being bad for nonjoinder of parties. On merits claimed that respondent factory was having seasonal work for which only seasonal workers engaged and it was wrong that petitioners' seeking extension of service from time to time rather was engaged only for seasonal worker and casual workers. Admitted the petitioners were engaged in 1998 as well as in 2001 as seasonal casual workers and paid wages as per instructions of the Govt. of H.P. It has been denied that petitioners had completed 240 days total number of days in any of calendar year and they had not been allowed to leave with wages to encash the same. Denying cause of action discrimination amongst workmen of the factory, it is contended that leave with wages were paid to the petitioners as per the instructions of Registrar, Cooperative Society. Since the petitioners were casual workers engaged for limited period who had not completed 240 days in all the four years they worked with the respondent, provisions of Section 25-F of the Act are stated to be not attracted in the present case. Accordingly, petition was sought to be dismissed.

7. The petitioner filed rejoinder, reiterated his stand as maintained in the claim petition.

8. To prove their case, petitioners had examined themselves as PW1 tendered/proved their Ex.P1 copy of advertisement dated 18.4.1998, Ex.P2 copy of letter dated 20.4.1998, Ex. P3 copy of letter dated 29.3.1999, Ex. P4 copy of letter dated 29.3.1999, copy of publication dated 15.10.1999 Mark-A, Ex. P5 copy of letter dated 1.11.2001, Ex. PX copy of letter dated 20.4.1998, Ex. Mark-C copy of letter dated 19.9.2001, copy of letter dated 17.10.2001 Mark-E, copy of letter dated 16.11.2001 Mark-F, copy of letter dated 29.12.2001 Mark-G, copy of letter dated 4.1.2002 Mark-H, copy of letter dated 13.2.2002 Mark-I, copy of letter dated 29.9.2001 Mark-L, copy of letter dated 10.5.2002 Mark-J, copy of letter dated 5.9.2001 Mark-B, copy of EPF Scheme 1995 Mark-L and closed evidence. On the other hand, repudiating the evidence led by petitioner, respondent had examined Shri Hiren Mittra, the then Manager, Cooperative Tea Factory, Palampur as RW1.

9. I have heard the Authorized counsel representing petitioner and Id. counsel for respondent, gone through records of the case carefully.

10. From the contentions raised, following issues were framed on 17.05.2004 for determination:

1. Whether the termination of services of the petitioners by the respondent w.e.f. 30.10.2001 without complying the provisions of Section 25-F of the Industrial Disputes Act, 1947 is legal and justified?

2. If issue no.1 is not proved to that relief of service benefits, the workmen are entitled to? ...*OPP*.
3. Whether the petitioner has not disclosed any cause of action, as alleged? ...*OPR*.
4. Whether the petition is bad for non-joinder of necessary parties? ...*OPR*.
5. Relief.

11. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : No

Issue No.2 : Discussed

Issue No.3 : No

Issue No.4 : No

Relief : Claim petition is dismissed per operative part of the Award

REASONS FOR FINDINGS

ISSUES NO. 1 AND 3

12. All these issues have been taken up together for discussion being interconnected which can be disposed of simultaneously without repetition of evidence.

13. It is admitted case of the claimants/petitioners that they have not remained engaged in the years they worked for more than 240 days attracting applicability of Section 25-F of the Act. Be it noticed that allegations as contained in para no.4 of the claim petition revealed that petitioners had completed 2/3rd of the total number of days in the remainder of calendar year and that the employer had never sanctioned leave with wages during the services of petitioners and that encashment was also not made at the time of their illegal termination. With the aid of such allegations petitioners had made futile endeavour to establish in the years 1998, 1999, 2000 and 2001, they had collectively worked for more than 240 days as by working 2/3rd of the total number of days would not constitute to 240 days. The plea of petitioners being engaged for required number of days gets negatived from mandays chart Ex.P4 which shows that petitioner Rajesh Chand figured at serial no.5 of the mandays chart to have worked for 183 days, 193 days, 200 days, 103 days and 77 days in 1998 to 2001 whereas co-petitioner Subhkaran had worked for 176 days, 182 days, 198 days, 108 days and 68 days in the years 1998 to 2001 respectively. Copetitioner Bir Bhanu Partap had worked for 187 days, 195 days, 198 days, 106 days and 76 days whereas petitioner Shashi Pal Singh had worked for 176 days, 193 days, 192 days, 105 days and 75 days and one Kuldeep Katoch had worked for 120 days, 203 days, 184 days, 198 days, 82 days and 83 days in these four years. If the working days as shown in the mandays chart are computed co-petitioner no.1 Rajesh Chand had worked for 756 days whereas Subhkaran had worked for 732 days, Bir Bhanu Partap had worked for 762 days, Shashi Pal had worked for 741 days and Kuldeep Katoch had worked for 696 days in the four years. There is nothing in this document to show that any point of time these co-workers have continuously worked for 12 months in preceding 12 months from their date of retrenchment. The petitioners have tried to establish through claim petition by saying that they had never given sanctioned leave during service or encashment facility.

It is nowhere shown as to how these persons have made which required encashment of leave and sanction of leave. Before proceeding further, it would be also relevant referred to Ex. P1 the advertisement for the post of supervisors published in the Divya Himachal in the month of April, 1998. A bare glance of the interview shows that qualification was Graduate and the nature of job was temporary. With the aid of this advertisement and letter Ex. P1 addressed to Bir Bhanu Partap, an attempt has been made to show that petitioners who were initially engaged for 89 days and their salary would be Rs.2000/- per month. Now it is to the same for the petitioners while working initially for 89 days and thereafter continuing with the respondent for four years working for different number of days would constitute to status to that of regular employment and purely on temporary when the advertisement clearly shows that petitioners were engaged as supervisors purely on temporary basis. Ld. counsel for the respondent has placed on reliance on the judgment of Hon'ble Apex Court reported in **AIR 2007 SC 631 titled as M.D., Karnataka Handloom Dev. Corpn. Ltd. v. M. L. Raval**. Relevant para of the judgment is reproduced below:

"Industrial Disputes Act (14 of 1947). Ss. 25-F, 2(o)(bb). 'Worker'. Retrenchment. Respondent engaged on contract basis, assigned to train weavers on time specific short term scheme sponsored by State Handloom Dev. Corpn. Paid stipend. Is not a 'worker'. Soon after expiry of specific period respondent's service was discontinued. It is not a retrenchment, as defined under S. 2(o) of the I.D. Act. Compliance with S. 25-F not necessary".

Applying the ratio of this judgment coupled with facts of case in hand, it would not be erroneous to conclude that petitioners were regularized in service after completion certain number of days rather from the basic object of engagement was temporary period of several months and their job was discontinued being specific engagement in a year. As such, no regular working of the petitioners with the respondent and in specific year they had not worked for 240 days as required to establish for the applicability of Section 25-F of the Act. Section 25-F of the Industrial Disputes Act, 1947 is reproduced below for reference which reads as under:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. Stepping into witness box as PW1 co-petitioner Bir Bhanu Partap has proved Ex. P1 advertisement, Ex. P2 appointment letter and extended time letter Ex. P3. He has specifically stated that he had worked along-with other co-workers as supervisor w.e.f. April, 1998 to October, 2001. He has also specifically stated that it was never written in the letter that the work was seasonal in nature. In cross-examination of PW1 has admitted that appointment was only for 89 days and thereafter appointment was extended vide Ex. P3 but no such letter was brought before the Court. Although appointment letter relied upon by the petitioners does not stipulate that work of the respondent industry was seasonal in nature yet inference of industry being seasonal in nature can be inferred from the fact all the petitioners were engaged for 600 to 700 days in four years in aggregating 150 days on average. If workers had worked for 150 to 200 days the same goes to

show that worker was not working therefore the nature of industry was seasonal in nature and seasonal worker was not entitled to claim of regularization from the respondent after their retrenchment. As has been discussed in the foregoing paras that provisions of Section 25-F of the Industrial Disputes Act would be attracted only when petitioners established that they had worked for 240 days in a year in preceding 12 months from the date of termination but case in hand that there is not such evidence on record to establish that any of the petitioners had worked for 240 days in a year preceding his termination. Therefore, serving of notice was not essentially *moreso* when in the past also petitioners were orally appointed and also their services were terminated orally. As such, it could not be stated that non compliance of Section 25-F of the Act. It is rightly been contended by Id. counsel for respondent that since the reference dated 3rd April, 2002 primarily pertains to giving findings on violation of Section 25-F of the Act therefore, the evidence led by the petitioners concerning Minimum Wages Act ceased to have no relevance and the same has not been taken up for discussions in these paragraphs. In view of the foregoing discussions as well as evidence on record led by the petitioners, they are not entitled to any relief as the respondent had not violated the provisions of Section 25-F of the Act. Hence these issues are answered accordingly.

ISSUE NO. 3

15. Thus, the petition is bad for non-joinder of necessary parties, as the petitioner has failed to establish violation of any of the provisions of the Industrial Disputes Act by the respondent who are also held not entitled even compensation in lieu of service rendered by them. Hence, this issue is answered against the petitioners and in favour of respondent.

RELIEF

16. As a sequel to my findings on foregoing issues, the instant claim petition is dismissed. In the peculiar circumstances of the case, the parties are left to bear their own costs.

17. The reference is answered in the aforesaid terms.

18. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

19. File, after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2017.

(K.K. SHARMA)

*Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.*

SOCIAL JUSTICE & EMPOWERMENT-B DEPARTMENT

NOTIFICATION

Shimla-171002, the 6th April, 2017

No. SJE -B-E(2)-4/2016.—In continuation of this Department Notification No Wel-B-F(1)-1/2001-Vol-II dated 9th September, 2011 the Governor, Himachal Pradesh is pleased to add

Muslim castes of (Teli, Julaha/Kabirpanthi, Lohar and Jogi (other than those included in the list of SCs) in the State list of Other Backward Classes of Himachal Pradesh.

The above categories of classes/communities in Himachal Pradesh shall be entitled to various facilities/concessions provided by the State Government from time to time.

The reservation in services for the notified communities as determined by the State Government from time to time will be available to the members of the Backward Classes subject to exclusion of classes/communities on the basis of creamy layer criteria amended by the State Government from time to time. However, the rule of exclusion shall not be applicable for the purpose of census/counting of the Backward Classes for reservation .

Similarly the concept of creamy layer shall not apply to elections conducted through the democratic process.

By order,
Sd/-
Principal Secretary (SJ&E).

SOCIAL JUSTICE & EMPOWERMENT (SECTION-A) DEPARTMENT

NOTIFICATION

Shimla-02, the 25th April, 2017

No. SJE-A-(A)-7/2015.—In pursuance of the Notification No. DIT-(e-District) 1/2011-83 dated 13th May, 2015 issued by the Department of Information Technology, Himachal Pradesh, it is hereby informed that the public services offered by the Department of Women & Child Development, Himachal Pradesh, which are mentioned below will now be delivered to the citizen through online system using the e-District application (<http://edistrict.hp.gov.in/>) Himachal Pradesh State Portal (<http://himachal.nic.in/>) State Service Delivery Gateway (SSDG) (<https://eserviceshp.gov.in/>) Lok Mitra Kendras (<http://lmk.gov.in/>) Sugam:

The services offered by the Department of Women & Child Development are:

- Mother Teresa Ashaya Matri Sambal Yojana.
- Widow Re-Marriage Scheme.
- Chief Minister Bestowing Plan (Mukhya Mantri Kanyadaan Yojana)
- Beti Hai Anmol Yojna
- Himachal Pradesh Bal / Balika Suraksha Yojana
- Mata Shabri Mahila Sashaktikaran Yojana

Government fee and user charges are as below:

1. Government Fee: NIL

2. *LMK User Charges:

Sr. No.	Activity	Proposed user charges (in Rs.)
1.	Filling up of Application details and uploading citizen request through e-District Portal or LMK Portal	10/-
2.	Scanning & uploading of supporting documents, if any, on the portal / e-District Portal	2/- per page
3.	Printing of the final document/ certificate to the citizen after approval of the concerned department (if any)	10/- per page

OR

Sugam User Charges: Rs. 10 per Application.

***Note- LMK** user charges or Sugam user charges would be applicable if the applicant applies at LMK or Sugam centre. The applicant may also apply online directly, wherein only the processing fee along with the government fee will be applicable.

3. In addition to the fees being levied under Sr. No. 1 & 2, an additional Processing Fee in order to provide Women & Child Development service through e-District application would be charged Rs 10/- per application. The proceeds of Rs 10/- would be distributed in the following manner:

Rs 7/- (70%) *i.e.* (to Departmental e-governance Society)

Rs 3/- (30%) *i.e.* (to e-governance Society of the IT Department)

By order,
ANURADHA THAKUR,
Pr. Secretary (SJ&E).

IRRIGATION & PUBLIC HEALTH DEPARTMENT

NOTIFICATION

Shimla-2, the 03rd May, 2017

No. IPH-B(A)4-3/2016.—The Governor, Himachal Pradesh is pleased to constitute a Project Management Unit (PMU) for preparation of Shimla Water Supply and Sewerage Project and arranging funds from the World Bank, consisting of the following:—

Official Members

1. Project Director (Engineer-in-Chief, IPH)
2. Director Technical (Chief Engineer IPH, Shimla Zone)
3. Project Coordinator (SE, GSWSSC)
4. Executive Engineers (GSWSSC)
5. Support Engineers (AE Designs, GSWSSC)
6. Junior Office Assistants-cum-Data Entry Operators (3 Nos.) to be transferred from IPH Department
7. Circle Accounts Officer (to be deputed from the Accountant General's Office)

Non- official Members

1. Water Supply Expert (1)
2. Waste Water Expert (1)
3. Procurement Expert (1)
4. Financial Expert (1)
5. Environment and Social Expert (1)
6. Quantity Surveyors (2)
7. Surveying Agency
8. Consultants hired for short term to conduct various studies

2. All the experts will help the IPH Department to ensure clear technical oversight and enable clear distinction of responsibilities.

3. Superintending Engineer, GSWSSC will exercise the financial powers at par with Superintending Engineer, IPH Department for the purpose of the World Bank project titled "Shimla Water Supply and Sewerage Project" and for all funds including that for project preparation received as Grant-in-Aid through IPH Department and will follow World Bank procedure for procurement.

4. This has been uploaded on e-Gazette of Himachal Pradesh Government.

By order ,
ANURADHA THAKUR,
Secretary (I&PH) .

बहुउद्देशीय परियोजना एवं उर्जा विभाग

अधिसूचना

शिमला-2, 06 अप्रैल, 2017

नस्ति संख्या-एमपीपी-ए(3)-2/2003-I.—हिमाचल प्रदेश के राज्यपाल, विद्युत अधिनियम, 2003 (2003 का 36) की धारा 89 के साथ पठित धारा 180 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना संख्या: एमपीपी-ए (3)-2/2003 तारीख 30 नवम्बर, 2006 द्वारा अधिसूचित और राजपत्र, हिमाचल प्रदेश में तारीख 10 मार्च, 2007 को प्रकाशित हिमाचल प्रदेश विद्युत विनियामक आयोग (अध्यक्ष और सदस्यों के वेतन,

भत्ते और सेवा की अन्य शर्तों) नियम, 2006 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात्:-

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश विद्युत विनियामक आयोग (अध्यक्ष और सदस्यों के वेतन, भत्ते और सेवा की अन्य शर्तों) संशोधन नियम, 2017 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

2. नियम 4 का प्रतिस्थापन.—हिमाचल प्रदेश विद्युत विनियामक आयोग (अध्यक्ष और सदस्यों के वेतन, भत्ते और सेवा की अन्य शर्तों) नियम, 2006 के नियम 4 के स्थान पर निम्नलिखित नियम रखा जाएगा, अर्थात्:-

“4. वेतन.—आयोग का अध्यक्ष, अधिसूचना संख्या:जी.एस.आर. 721 (ई) तारीख 25 जुलाई, 2016 द्वारा अधिसूचित, प्रथम जनवरी, 2016 से लागू केन्द्रीय सिविल सेवा (संशोधित वेतन) नियम, 2016 के अनुसार प्रतिमास, 2,25,000/—(केवल दो लाख पच्चीस हजार) रुपये का नियत वेतन प्राप्त करने का हकदार होगा और आयोग का सदस्य, उच्चतर प्रशासनिक ग्रेड के अधिकारी द्वारा आहरित किए जा रहे वेतन के बराबर वेतन आहरण करने का हकदार होगा:

परन्तु यदि आयोग का अध्यक्ष उच्च न्यायालय का न्यायाधीश रहा है तो वह ऐसा वेतन प्राप्त करेगा, जैसा उच्च न्यायालय के न्यायाधीश को अनुज्ञेय है:

परन्तु यह और कि आयोग के अध्यक्ष या सदस्य के रूप में नियुक्त व्यक्ति यदि पुनर्नियोजित पेन्शनभोगी है तो पद जिसमें वह पुनर्नियोजित किया गया है, के विहित वेतनमान में उसका वेतन, वित्त विभाग के कार्यालय ज्ञापन संख्या: फिन (सी)बी (7)—10/84 तारीख 1—12—1988 द्वारा जारी हिमाचल प्रदेश सिविल सर्विसीज(फिक्सेशन ऑफ पे ऑफ री—इम्पलाइड पेन्शनरज़) आर्डर, 1988 में अन्तर्विष्ट उपबन्धों के अनुसार पेन्शन की रकम, अर्थात् वेतन घटाव (माइनस) पेंशन, को घटाकर, नियत किया जाएगा।”

आदेश द्वारा,
तरुण श्रीधर,
अतिरिक्त मुख्य सचिव (विद्युत)।

MPP & POWER DEPARTMENT

NOTIFICATION

Shimla-171002, the 06th April, 2017

File No. MPP-A(3)-2/2003-I. In exercise of the powers conferred by section 180 read with section 89 of the Electricity Act, 2003 (36 of 2003), the Governor of Himachal Pradesh is pleased to make the following rules further to amend the Himachal Pradesh Electricity Regulatory Commission (Salary, Allowances and other Conditions of Service of Chairperson and Members) Rules, 2006, notified vide Notification No.MPP-A(3)-2/2003 dated 30th November, 2006 and published in the Rajpatra, Himachal Pradesh on the 10th March, 2007, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Electricity Regulatory Commission (Salary, Allowances and other Conditions of Service of Chairperson and Members) Amendment Rules, 2017.

(2) These rules shall come into force from the date of publication in the Rajpatra, Himachal Pradesh.

2. Substitution of rule 4.—For rule 4 of the Himachal Pradesh Electricity Regulatory Commission (Salary, Allowances and other Conditions of Service of Chairperson and Members) Rules, 2006, the following rule shall be substituted, namely:—

“4. Pay.—The Chairperson of the Commission shall be entitled to receive a fixed salary of Rs. 2,25,000/- (Two Lakh and Twenty Five Thousand only) per month as per the Central Civil Services (Revised pay) Rules, 2016, notified vide Notification No.G.S.R721(E) dated 25th July, 2016, applicable from 1st day of January, 2016, and the Member shall be entitled to draw salary equal to the salary drawn by officer of Higher Administrative Grade:

Provided that if the Chairperson of the Commission has been a Judge of the High Court, he shall receive pay as admissible to a Judge of the High Court.

Provided further that if a person appointed as the Chairperson or Member of the Commission is a re-employed pensioner, his pay in the prescribed scale of the post in which he is re-employed shall be fixed by deducting the amount of pension i.e. pay minus pension, in accordance with the provisions contained in Himachal Pradesh Civil Service (Fixation of Pay of Re-employed Pensioners) Orders, 1988, issued by the Finance Department vide OM No.Fin(C)-B(7)-10/84 dated 1.12.1988.”

By order,
TARUN SHRIDHAR,
Addl. Chief Secretary (Power).

बहुउद्देशीय परियोजना एवं उर्जा विभाग

अधिसूचना

शिमला-2, 06 अप्रैल, 2017

संख्या-एमपीपी-बी(10)-3/2007.—हिमाचल प्रदेश के राज्यपाल, विद्युत अधिनियम, 2003 (2003 का 36) की धारा 180 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, अधिसूचना संख्या एमपीपी-ए(3)-7/2004 तारीख 3 मई, 2007 द्वारा अधिसूचित और तारीख 31 जुलाई, 2007 को राजपत्र हिमाचल प्रदेश में प्रकाशित हिमाचल प्रदेश विद्युत विनियामक आयोग निधि (निधि का गठन, निधि के उपयोजन की रीति एवं बजट तैयार करने के लिए प्रारूप और अवधि) नियम, 2007 का और संशोधन करने के लिए निम्नलिखित नियम बनाते हैं, अर्थात्:—

1. संक्षिप्त नाम और प्रारम्भ.—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश विद्युत विनियामक आयोग निधि (निधि का गठन, निधि के उपयोजन की रीति एवं बजट तैयार करने के लिए प्रारूप और अवधि) संशोधन नियम, 2017 है।

(2) ये नियम राजपत्र, हिमाचल प्रदेश में इनके प्रकाशन की तारीख से प्रवृत्त होंगे।

2. नियम 3 का संशोधन.—हिमाचल प्रदेश विद्युत विनियामक आयोग निधि (निधि का गठन, निधि के उपयोजन की रीति एवं बजट तैयार करने के लिए प्रारूप और अवधि) नियम, 2007 के नियम 3 के खण्ड (क) में श्वेतन, भत्ते शब्दों और चिन्ह के पश्चात् “चिकित्सा प्रतिपूर्ति, सेवानिवृत्ति प्रसुविधाएं, सेवातं प्रसुविधाएं” शब्द और चिन्ह अन्तःस्थापित किए जाएंगे।

आदेश द्वारा,
तरुण श्रीधर,
अतिरिक्त मुख्य सचिव (विद्युत)।

MPP & POWER DEPARTMENT

NOTIFICATION

Shimla-171002, the 06th April, 2017

File No. MPP-B(10)-3/2007.—In exercise of the powers conferred by section 180 of the Electricity Act, 2003 (36 of 2003), the Governor of Himachal Pradesh is pleased to make the following rules further to amend the Himachal Pradesh Electricity Regulatory Commission Fund (Constitution of Fund, the manner of application of the Fund and form and time for preparation of Budget) Rules, 2007, notified vide Notification No. MPP-A(3)-7/2004 dated 3rd May, 2007 and published in the Rajpatra, Himachal Pradesh on the 31st July, 2007, namely:—

1. Short title and commencement.—(1) These rules may be called the Himachal Pradesh Electricity Regulatory Commission Fund (Constitution of Fund, the manner of application of the Fund and form and time for preparation of Budget) Amendment Rules, 2017.

(2) These rules shall come into force from the date of their publication in the Rajpatra, Himachal Pradesh.

2. Amendment of rule 3.—In rule 3 of the Himachal Pradesh Electricity Regulatory Commission Fund (Constitution of Fund, the manner of application of the Fund and form and time for preparation of Budget) Rules, 2007 in clause (a) after the words and signs “salary, allowances”, the words and signs “medical reimbursement, retiral benefits, terminal benefits” shall be inserted.

By order,
TARUN SHRIDHAR,
Addl. Chief Secretary (Power).

PUBLIC WORKS DEPARTMENT**ORDER***Shimla-2, the 21st April, 2017*

No. PWD (B)8(3)1/98.—In exercise of the powers conferred by Section-18 of H.P. Aerial Ropeways Act, 1968(Act No. 7 of 1969) read with rule 7 of the Himachal Pradesh Aerial Rules; 1972, and in supersession of this Department's order dated 16 -05- 2014 the Governor, Himachal Pradesh is pleased to order to revise the following maximum rates to be charged by the Asia Resorts Limited, Timber Trail Resorts, Parwanoo District Solan for working of Aerial Ropeways, from the passengers from the date of issue of this notification, namely:—

1. Rs. 1000/- to and fro for adult+ applicable taxes.
2. Rs. 800/- to and fro for child + applicable taxes.

These rates will be applicable with immediate effect.

By order,
Sd/-
Additional Chief Secretary (PW).

PUBLIC WORKS DEPARTMENT**NOTIFICATION***Shimla-171002, the 19th April, 2017*

No. PBW(B)F(7)3/2009-I.—In continuation to this department notification of even number dated 18th April, 2017 the Governor, Himachal Pradesh is pleased to declare the 'Bathri-Sundla-Langera J&K Boundary Road' in District Chamba have a length of 96.940 kms as Major District road No. 89 at sr. no 80. Accordingly the total length of Major District Roads in the State will be 3864.470 kms.

By order,
Sd/-
Addl. Chief Secretary (PW).

कार्यालय नायब तहसीलदार भू-व्यवस्था वृत्त नैना टिक्कर, तहसील पच्छाद,
जिला सिरमौर, हिमाचल प्रदेश

आवश्यक सूचना

दिनांक: 05 अक्टूबर, 2016

नम्बर: रैव0(एसएनटी) पा0 प0 नैना टिक्कर 33/2016.—माननीय उच्च न्यायालय हिमाचल प्रदेश के वाद संख्या CWP NO 8072 of 2014 शीर्षित अनुप शर्मा बनाम सरकार हिमाचल प्रदेश में दिए गए आदेशानुसार महाल काहन हदबस्त नम्बर (240) तहसील पच्छाद, जिला सिरमौर, हिमाचल प्रदेश में भू-व्यवस्था का कार्य आरम्भ किया गया, जिसके अन्तर्गत हाल बन्दोबस्त में मौका की स्थिति को ध्यान में रखते हुए जनहीत में उप सम्पदा कनलोग व सम्पदा काहन बनाए गए।

जैसा कि उक्त वाद में जिक्र किया कि उक्त सम्पदा का साबिक शजरा/मुसाबी सही हालात में नहीं है जिस कारण वहां तकसीम, सीमांकन आदि का कार्य नहीं हो पा रहा है इस लिए उक्त सम्पदा में बन्दोबस्त का कार्य आरम्भ किया गया।

हाल बन्दोबस्त में उपसम्पदा कनलोग व सम्पदा काहन का सर्वेक्षण NLRMP के अन्तर्गत नवीन तकनीक से **DGPS व ETS** की सहायता से किया जा चुका है जिसके उपरान्त अब इनका अधिकार-अभिलेख तैयार किया जाना है।

विभाग ने उक्त सम्पदा की साबिक मुसाबी की प्रति जब अभिलेख कक्ष राजगढ़ से प्राप्त की तो उसकी स्थिति सही हालात में नहीं है, जो कहीं-कहीं पढ़ी नहीं जा रही है उसके उपरान्त विभाग ने अपने स्तर पर भी काफी प्रयास किए हैं लेकिन उसके बावजूद कुछ खसरा नम्बरान की सीमा ज्ञात नहीं हो रही है जिस कारण उनको डिजिटिज्ड नहीं किया जा सकता है।

अतः इस सूचना के द्वारा उप सम्पदा कनलोग व सम्पदा काहन के भू-स्वामियों काश्तकारान को सूचित किया जाता है कि उनके पास उनकी भूमि के मैप अर्थात अक्स मुसाबी है इन्तकालात इत्यादि जिन में ततीमा आदि हो की सत्यापित प्रतियां हैं उनकी प्रति **भू-व्यवस्था नायब तहसीलदार कार्यालय नैना टिक्कर** में इस सूचना के जारी होने से एक मास के अन्दर-अन्दर प्रस्तुत करें ताकि हाल अभिलेख माननीय उच्च न्यायालय के आदेशानुसार समय पर तैयार किया जा सके।

दिनांक 05-10-2016

मुकाम नैना टिक्कर

आदेश द्वारा,
(नारायण सिंह नेगी),
नायब तहसीलदार भू-व्यवस्था
वृत्त नैना टिक्कर, तहसील पच्छाद,
जिला सिरमौर, हिमाचल प्रदेश।

